

# The Andover Review

A JOURNAL FOR SECONDARY EDUCATION



Spring 1976

*Schools and the Law*

THE COURSE of events thrust upon us the theme for this issue of THE REVIEW — Schools and the Law. We are grateful to Walter McCann for pointing out that “Lawyers and educators have done business side by side since the inception of American public schooling.” However, as he observes, the effect of *Brown v. Board of Education* in 1954 was unprecedented in that it pointed the way to a redress of educational wrongs through the courts. Thomas Lyons and Lamar Crittenden put court decisions into a social and legal context, and Jane Stahl, Robert Hargraves, Hendrik Gideonse and Trudy Martin tell us the impact court decisions have had on those involved — school administrators, parents, teachers and students. There has been legislation which has significantly affected education. Katharine Auchincloss analyzes the Buckley Amendment. James Satterthwaite discusses the attempt of the State of Maine to legislate equality in primary and secondary education. Benson, Guthrie and Archibald present the historical background for legally imposed inefficiency which has resulted in lock-step time-serving in the schools. Tom Pollock concerns himself with the important matter of legal education for students.

We find ourselves more and more limited by our theme, not so much by design as by the number of contributors. We continue, however, to encourage contributions, whether on the assigned theme or not. The fall issue will be devoted to a consideration of national education. We are interested in how students in secondary schools react to the phenomenon of nationalism. We are also interested in the school as a reflection of national culture: what makes a school in Australia an Australian school, what makes a Chinese school Chinese.

*The Editor*

THE REVIEW invites articles, poetry and graphics from all quarters and will select material with concern for secondary education. If mailed, graphic work should be insured by the sender. It will be returned in due course in the same manner.

## A JOURNAL FOR SECONDARY EDUCATION

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# “The Most Important Function . . .”

*Where Law and Education Meet*

WALTER McCANN

A fable for these troubled days:

Once upon a time almost everyone believed that education was the most important of all things. Then some kids decided that it wasn't so important and dropped out of school, or wouldn't go to college. Next, a lot of politicians said it didn't work so well, caused too much trouble and cost too much anyway. Many parents agreed, especially the ones who wanted to buy houses. Sophisticated social scientists chimed in and said, "Why, of course, it's just as we told you. Education makes no significant difference — like everything else." Finally, the educators, or many of them, reluctantly agreed. No one believed in education anymore . . . except the lawyers who sued everybody and made them take it all back, and everyone lived smartly ever after.

Silly? Of course, but not altogether. Education has become a focal point of legal action, particularly for court intervention in the process of schooling. Yet the influence of law in educational matters is not so new as bright-eyed legal activists and dour defendants would have us believe. Remember that most American children attend public schools. Estimates vary, but more than 90% of school age children spend a good part of every weekday under the care and supervision of public employees — teachers, principals, counselors, custodians and superintendents. All of these people work for school districts which are created by the state to run

schools. School districts have many legal powers, principal among them the capacity to raise taxes and spend money for educational purposes. They hire, occasionally fire, and can force young people to go to school. Without the authority of law, school officials would have none of these powers. Most of this authority has been around for a long time, long enough that we do not give it a second thought. Educational historian Jay Featherstone has good reason to suggest that we live in "the United States of Amnesia."<sup>1</sup> We seldom recognize the compatibility of most law and most education. Lawyers and educators have done business side by side since the inception of American public schooling. Their relationship is not new; and for the most part, it is still cooperative, not adversarial.

Yet something has changed, most likely in society at large, and educators are quick to point to the difference. We are probably one of the most litigious societies history has ever known, as the backlog of cases in our overburdened courts will testify. We sue one another at a fast and furious pace. We often seek fundamental redress from the government not by petition but by writ. The public interest law firm or lawyer, though not new, has become a recognized and more prominent feature on the social landscape. Although education is by no means the sole target — or beneficiary — of increased private and public interest litigation, it is undoubtedly one of the major sectors of increased legal activism and judicial intervention.<sup>2</sup>

Several factors have probably combined to increase judicial scrutiny of the educational system. Among them are greater reliance on courts as other institutions fail to respond to pressures for reform; the effect of the civil rights movement, particularly the strategies of the NAACP; and frustration with the public school system.

Analysis of widespread resort to courts, or quasi-judicial proceedings, is beyond our ken in this brief survey. Nevertheless, we

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<sup>1</sup>Featherstone, Joseph. "Notes on Educational Practice" in *Harvard Graduate School of Education Association Bulletin*, Vol. XIX, Number 3, Spring/Summer, 1975.

<sup>2</sup>Robert Simpson, Director of the Center for Law and Policy at the University of Miami in Florida, recently took an informal poll at a meeting. One in six of the educators at that meeting was or had recently been involved in a legal action. Though not an unbiased or formal survey, the figure is impressive.

know that many complex issues which otherwise would have been left to legislative action are now pursued through the courts. Even a glance at crowded court dockets reveals a broad range of social disputes which have traditionally been left to legislatures. They include environmental, housing and welfare issues as well as educational matters. It is no accident that more lawyers find employment in attacking these issues. In spite of hard times, a directory of public interest law groups would probably be larger this year than last, and even a reluctant Congress has finally agreed to support a public legal services corporation. To some unknowable extent, increased reliance on litigation to produce social and political change seems due to a general decline in public faith in the processes of government. We have not as a people come to love and trust lawyers, but our mistrust of legislators and other officials is even deeper. The delay, confusion and simple inability to act that characterizes so much governmental activity has led to greater recourse to the courts, where supposedly questions can be framed in a reasonably clear manner and definitively answered.<sup>3</sup>

The Civil Rights movement has assumed an important role in the interplay of law and education. The decision by major components of the movement, particularly the NAACP, to use the courts as the point of the lance in their attack on segregation has had telling effect. Directly, this strategy led to the most important education case ever, and probably one of the most critical events in the history of American Education, the decision in *Brown v. Board of Education*.<sup>4</sup> The direct, if not immediate, impact of *Brown* is unprecedented. Even when applied only to Southern-style segregation, as it was until recently, *Brown* outlawed the basic educational structure of hundreds of school districts and affected the

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<sup>3</sup>Courts tend to reduce complex matters to relatively simple questions which can be answered "yes" or "no." Decisions are made and orders granted. Who wins and who loses is pretty clear, or at least this is the general belief. Whether processes with these characteristics are the most appropriate for answering complex educational questions is an open question.

<sup>4</sup>For an analysis of the NAACP's decision to pursue redress through the courts, the interested reader might turn to *The Petitioners*, by Loren Miller. For those who have not read it, *Brown* is found in the Supreme Court reports at 347 U.S. 483 or 74 S.Ct. 686 (1954).

daily lives of thousands of children. Now that *Brown* has been applied to Northern-style segregation — Boston, Denver and San Francisco — its impact will reach even more children. Probably no single event in the history of American education has had such pervasive effect on what actually occurs in school systems. To say this is neither to endorse nor to decry the impact of *Brown*, but simply to underline its importance.

The indirect sway of *Brown* is of equal importance. It nurtured the view that lawyers and litigation could play a significant role in shaping educational policy, perhaps even educational practice. It is probably no accident that many young legal activists who have become involved in education first cut their lawyerly teeth on cases which sought to apply *Brown* to local school districts. They not only gained valuable experience, but also became firmly convinced, as the Supreme Court was later to say, that the Constitution does not stop "at the schoolhouse gate."<sup>5</sup>

Beyond that, the language of *Brown* both created and mirrored the society's high expectations of and positive faith in education. Consider this powerful language from the decision:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.<sup>6</sup>

Given the current controversies over schooling, this language is startling in its clarity and optimism. In these post-*Inequality* days,

<sup>5</sup>*Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969).

<sup>6</sup>*Brown*, *op. cit.*

most social scientists, educators and parents would express a more tempered view than did the Supreme Court.<sup>7</sup>

A reduction in the authority and legitimacy of school officials has accompanied a decline in public confidence in educational institutions. As a result students and others have increasingly challenged their authority, creating disputes which have more frequently wound up in the courts. Reading through the old cases, one cannot help but note the reluctance of judges to intervene between the schoolman or marm and the pupil. Courts used to exhibit considerably greater deference to the expert opinion of school personnel who were presumed to have special expertise.

Why have the courts changed? There are several reasons. Frequency of attack, in and of itself, may undermine the authority of any public official. Further, as courts respond, judges read and listen to witnesses and develop more informed, stronger views of their own. Finally, courts, like other institutions, respond to pressure, and more frequent demands for decision may simply yield more responsive decisions. In a curiously circular way, therefore, assault on the decisions of school officials breeds doubts that their authority is legitimate, which in turn encourages further attacks, which in turn . . . and so the wheel spins.<sup>8</sup> On the other hand, stricter limits on the discretion of school officials may result from strengthened constitutional guarantees of due process and equal protection, a development which is by no means limited to educa-

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<sup>7</sup>*Inequality: A Reassessment of the Effect of Family and Schooling in America* by Christopher Jencks, et al. (Basic Books, Inc., N. Y.) burst as a bombshell on the educational scene in 1972. It has been read — and more often misread — to imply that schools are unimportant. Regardless of the accuracy or inaccuracy of the conclusions in *Inequality*, parents with children in the public schools are only moderately satisfied with their performance and “two bellwether groups — the college educated and the young adults — give the public schools the lowest ratings,” according to the Seventh Annual Gallup Poll Of Public Attitudes Toward Education contained in the December, 1975, issue of *Phi Delta Kappan*.

<sup>8</sup>One study of court cases and the authority of university administrators suggests that the impact of lawsuits might be to strengthen administrative authority. 4 *NOLPE School Law Journal*, 166. The study is limited, however, and bases its conclusions on the outcomes of the particular cases rather than the overall impact of legal intervention upon the administrative process. It does not fully take into account the possibility that the threat of legal action narrows administrative options through “precensorship” which causes administrators to behave in such a way that they are not legally challengeable.

tional settings. Other institutions, juvenile courts for one, have been held to stricter standards of procedural care in the last decade.<sup>9</sup> The decline of legitimacy and authority of social institutions, including schools, has resulted in extended procedural safeguards. The procedures are intended to bring into the open and to foster regularity and consistency in governmental decision-making, particularly where judgments involve the well-being of individual children. When trust was higher, these decisions were informal, private and ad hoc. Now that skepticism is the order of the day, we have moved toward such formality as the Buckley Amendment and the intricate procedures of the Chapter 766 (Special Education) in Massachusetts.<sup>10</sup> For some, this state of affairs creates instant nostalgia. But the "good old days" of relatively unfettered teacher or administrative discretion were surely better for officialdom than for many students, or for some teachers. As one federal judge put it, "Without exception, the controversial decisions of the Supreme Court in recent years were rendered in cases that could and should have been avoided if the party whose exercise of power were overturned had exercised that power properly to begin with."<sup>11</sup> No doubt many would take exception to this view. Still, it contains more than a grain of truth, particularly since judicial truth is finally defined by five majority votes on the Supreme Court of the United States.

What, briefly, are some of the many areas where the Court has ruled, or will rule, and which are of particular interest to educators?

### *racial segregation*

The U. S. Supreme Court continues to apply the basic principles of *Brown*, but now to northern-style school segregation, which is more closely connected to housing segregation than its southern

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<sup>9</sup>See *In re Gault* 387 U.S. 1 (1967), where the Supreme Court held that a minor was entitled to comprehensive due process rights which included notice, counsel, cross-examination and the privilege against self-incrimination.

<sup>10</sup>The Buckley Amendment gives students and parents access to school and university records. Chapter 766 contains carefully wrought, extensive procedures for the determination that a child is subject to its provisions.

<sup>11</sup>Yong, Hon. Don J., " 'Interesting Times' for School Administrators," 4 *NOLPE School Law Journal* 182 (1974).

cousin. Several questions are of considerable interest for the near future. First, will suits be brought with success in other major northern cities? Philadelphia and Chicago come immediately to mind, but there are many other, smaller cities whose school boards must be asking themselves the same question. The likely answer is "yes" on both scores, and this leads to the next inquiries. Is there legal room for metropolitan desegregation or for desegregation plans, city or metropolitan, which rely to any considerable extent on voluntary participation? The Court has ruled "yes" (Wilmington) and "no" (Detroit) on metropolitanism, with at least one critical difference apparently the extent of involvement by the state in the creation of segregated systems. The question is still partly open, but extensive court-ordered metropolitan desegregation outside of the South seems unlikely at this time. Additionally, legal prospects for plans that rely on voluntary action are not noticeably brighter, unless school boards follow a route other than the no-holds-barred resistance to desegregation that most boards pursue until delay is no longer feasible. Some voluntarism as a first resort might withstand legal assault, but its futility as a last resort is hard to escape.<sup>12</sup> The great difficulty, of course, is that school boards have not been willing to pursue voluntary plans until legal and political conditions have deteriorated and there is currently little reason to think that many boards will behave differently in the future.

### *student suspension*

The ultimate pain or the ultimate pleasure? Whichever it is, the Supreme Court last year in the *Goss* case held that no suspension, apparently no matter how short, could be imposed without some minimal procedural safeguards.<sup>13</sup> Conversations with school authorities immediately after the decision, when few knew more than newspaper stories told, yielded dire predictions that *Goss* would

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<sup>12</sup>See *Green v. County School Bd.*, 391 U.S. 430 (1968) for a judicial response to freedom of choice and *Alexander v. Holmes*, 396 U.S. 19, for a taste of judicial impatience with school board stalling. In *Alexander*, the Court ruled that "all deliberate speed" for desegregation is no longer permissible." Note, however, that both of these cases arose in the South, which has been under order to desegregate since 1954.

<sup>13</sup>*Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975).

handcuff school officials and undermine their authority. As the world has turned, some of these anxieties have tempered. The Court seems to have said not much more than that school officials must tell a youngster why he or she cannot stay in school and then listen to the student's side of the story. In emergencies even this minimal conversation is unnecessary. Understood in this light, *Goss* hardly suggests a frontal assault on the authority of schools. It does demand that people with power tell other people, even children, why they are being punished. School officials can probably expect more of the same, and, so far, there seems little educational reason to grumble about *Goss*.

### *student speech and expression*

The Supreme Court decided *Tinker v. Des Moines Independent Community School District* in 1969.<sup>14</sup> In its decision the Court held that school children who wore black armbands to school in silent protest against the war in Vietnam could not be suspended, for to do so would violate their First Amendment rights to freedom of speech.<sup>15</sup> School officials had not shown any reasonable grounds "to forecast substantial disruption or material interference with school activities." Since First Amendment rights are determined by balancing individual and governmental interests as they appear in specific situations, the school officials were able only to weigh a generalized fear of disruption against the rights asserted by the students. In other situations, where school officials have presented evidence that supports a prediction of disruption, courts have upheld official sanctions.<sup>16</sup> Court responsiveness in these cases troubles some lawyers, if not school officials, for they seem to say that disruptive action by students who oppose the speakers is "within the *Tinker* test" and can legitimize silencing the speaker.<sup>17</sup> Nevertheless, the overall impact of *Tinker*, judged by the reported cases,

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<sup>14</sup>*Tinker*, op. cit.

<sup>15</sup>The Court treated the armbands as a form of symbolic speech that was akin to actual speech.

<sup>16</sup>See *Guzick v. Drebus*, 431 F.2d 594 (6th Cir. 1970), cert. denied, 401 U.S. 948 (1971).

<sup>17</sup>Goldstein, Stephen R., *Law and Public Education*. Bobbs-Merrill Co., 1974, p. 331.

indicates an enlargement of student freedom of expression through the spoken and written word, as well as symbolic expression.<sup>18</sup>

### *school finance*

The Supreme Court of California, in *Serrano v. Priest*, held that state's method of financing schools was unconstitutional under the state and federal constitutions.<sup>19</sup> School finance reformers were jubilant, for the path to a national reform movement looked open. Those hopes were seriously eroded when the U. S. Supreme Court held in 1973 that the Texas state finance system, similar to that of California with respect to inequities among communities, did not violate the U. S. Constitution.<sup>20</sup> *Rodriguez* does not mean that financial reform through judicial action is blocked. It does mean, however, that the route is more arduous. Suits must now proceed through each state court system under their respective constitutions. Even if *Rodriguez* had been decided against the state and had provided a clear, nationally applicable standard, courts and legislatures would have faced complex legal and financial issues. Without this standard and the motive force of Supreme Court command, reform will proceed very slowly, if at all.<sup>21</sup> When combined with the spotty economic climate, the result is increased hope for those who prefer the financial status quo in education and a definite setback for those who oppose it.

In a related area, the Supreme Court over the past several years has consistently voided state attempts to provide more than modest support for children who attend private schools with religious affiliations. With the exception of transportation and textbooks, the

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<sup>18</sup>See, for example, *Scoville v. Board of Educ. of Joliet Township High School District 204*, 425 F.2d 10 (7th Cir. 1970), cert. denied, 400 U.S. 826 (1970).

<sup>19</sup>*Serrano v. Priest*, 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P. 2d 1241 (1971). As a technical matter the original decision held only that the system would be unconstitutional if the plaintiff could prove that it operated as he alleged. The plaintiff prevailed in subsequent litigation.

<sup>20</sup>*San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, rehearing denied 411 U.S. 959, 93 S.Ct. 1919 (1973).

<sup>21</sup>The snail's pace of progress in New Jersey, even after a state court decision overturned its finance program, is a vivid example of the new reality. See *Robinson v. Cabill*, 62 N.J. 473 (1973).

Court has struck down all state efforts to provide aid at the elementary and secondary level, and there is scant prospect for a major and immediate shift in its views.<sup>22</sup>

### *personal liability of school officials*

If school board members and others needed any spur to careful attention to the legal rights of their charges and employees, the Supreme Court provided it in *Wood v. Strickland*.<sup>23</sup> In *Wood* a sharply divided Court held that school board members could be held personally liable for official acts which violated a student's constitutional rights under Sec. 1983 of the Civil Rights Act of 1871. Traditional remedies in school cases involved injunctions, an order to cease illegal action, not personal damages. Although such damages might be hard to prove—and are insurable—school officials have not been fully reassured. The overall reaction is hard to assess, but it has probably been increased caution and greater reliance on counsel. *Wood* might turn out to be "The Lawyer's Relief Act of 1975," at least for attorneys concerned about education.

Almost no aspect of education is completely unaffected, and this brief review makes no pretense to do more than sample a few.<sup>24</sup> The important questions of whether the current mood will continue and, if so, for how long, are hard to answer. The difficulty stems partly from lack of distance. We are, after all, in the midst of a period of judicial activism in education. Even so, several tendencies have emerged. Many court decisions have set right genuine individual grievances which resulted from vesting excessive discretionary authority in school officials. Political and professional control of schools, which relies on majoritarianism and professional standards of conduct, have too frequently been insensitive to the rights of minorities or individual students. Although imperfect and not without cost, the judicial response — from *Brown* to *Tinker*

<sup>22</sup>See *Lemon v. Kurtzman*, 413 U.S. 825 (1973) and *Meek v. Pittinger*, 95 S.Ct. 38 (1974).

<sup>23</sup>*Wood v. Strickland*, 95 S.Ct. 992 (1975).

<sup>24</sup>Educational law textbooks for educators and law students have thickened and proliferated. The yearly review of cases by the National Organization on the Legal Problems of Education typically runs several hundred pages.

to *Goss* — has redressed real grievances. The Constitution is stronger and the schools more likely to operate in conformity to it. The other side of caution, however, is unjustified timidity. Teachers and administrators believe that they face a much higher risk that their decisions will be overturned by judges who are far from the scene, insensitive to the realities of troubled schools and committed to a different set of procedures and values. They are undoubtedly, although not completely, correct, and they have become more cautious in the exercise of their authority. Yet few people would react without ambivalence to such a change. Apparent fairness can be achieved by rigid adherence to rules, rather than by sensitive responsiveness to individual needs. Court decisions can foster a form of bureaucratic rationality, where rules overwhelm discretion and accommodation to individual needs diminishes. How will school officials react? Which tendency will prevail? The answers remain uncertain, but they surely lie at least as much in the hands of educators as with lawyers and courts.

*LAST NIGHT I REMEMBERED YOU,  
PENELOPE ALDERDICE*

Time buckles and I am back  
in high school where Mr. Henley's  
whiskey breath sours  
the room with Latin,  
fuzzing my mind  
until your hand floats up  
to question a verb,  
and I realize your legs  
grow like perfectly round  
thin tubes from your pleated skirt,  
plugging you into the floor  
like a fixture cast in aluminum.

Anodized against rust, Penelope,  
you hold up that moment  
for fifteen years  
on one skinny finger tip.

BARBARA EVE

# Changing Times, Different Tools

*A Sad and Angry Concession  
To Adversary Proceedings*

HENDRIK D. GIDEONSE

It is my good fortune to belong to a rather unique organization known as the Cleveland Conference. We are a policy-oriented group in education, meeting the first weekend of December each year. Our agendas are established by the returned-postcard responses of the members; our leader organizing a grouping of topics derived from our communiques.

Thus it was that having proposed the topic, "Litigiousness in American Education," I found myself instructed to do the honors. It was someone who heard me then who suggested I contribute my remarks to this special issue.

I began my brief presentation to the assemblage by commenting that I found myself at one and the same time sad and angry. Rather than talk about the topic I had been assigned, I felt I would much rather that we could have addressed, for example, the challenge of leadership and management in education in the last quarter of the twentieth century or the big issues of human liberation and our own self-transcendence as individuals and as a people and treat the topic as an educational problem and an opportunity at the same time.

Instead I was introducing a topic titled "litigiousness in education," a phrase I've been using for a long time as a catch-all term for the dramatic increase in the incidence of formalized adversary proceedings in education.

I haven't any formal credentials for undertaking this assignment, certainly no systematic training, but I have had experience drafting legislation, being sued, engaging in collective bargaining, writing affidavits in support of suits, testifying under subpoena, and so on.

As I jotted down my thoughts on the brief flight from Cincinnati to the meeting site, it gradually dawned on me that my pencil was stabbing at the paper a little harder than it needed to. Striking an apposite phrase or achieving a slightly better organizational frame was pleasing me just a little more than it really ought. I began to reflect on why that might be so.

Realization came suddenly. Of the fifteen working days immediately preceding my flight to Chicago, a very large number had been spent in litigious proceedings. I added them up. The equivalent of one full day had been invested preparing and testifying in an action brought by a faculty member denied tenure and promotion. A half-day had been spent responding to an Ohio Civil Rights Commission complaint about personnel decisions made prior to my accession to the deanship. Two full days had been spent working on a set of activities designed to forestall the possibility of an Attorney General's advisory ruling being sought which would have had the effect of tossing out a tough new set of standards recently adopted for teacher education programs in Ohio. Four full days plus were spent preparing for and otherwise meeting the demands of the formalized processes established by Board regulation providing for the periodic review of my administrative performance over the past four years. Eight days plus out of fifteen!

So much, then, for my credentials respecting litigiousness.

A simple analytical framework for understanding our present litigiousness would identify at least four major types or sources.

The first directly relates to the consumer movement. The most dramatic manifestations of this in education are not unlike the same phenomena in other fields. The recent attempt — unsuccessful to be

sure, but no less trying for educators seeking to defend themselves — to bring about a malpractice judgment against a California school system for graduating from high school a person who was functionally illiterate is one example. Another is the suit brought by a University student in Connecticut for the return of tuition on the grounds that the service provided in an education course was inadequate. These kinds of actions, whether or not they are pursued in the courts or in other arenas — for example, curriculum committees on which consumers sit, or advisory committees to colleges and programs, or parents councils required by Federal legislation — all are oriented toward assuring the quality, appropriateness, and genuineness of the services offered to the student and/or the student's parents or guardians or toward gaining some redress if the quality isn't there as expected.

A second type of litigiousness, far more frequently leading to court action, grows out of discrimination. Here the major foci have been race, special needs (including right to education suits and suits over the proper placement of children), affirmative action and equal employment opportunity, and so on. The root orientation of this set of concerns is to the impact of attitudes, beliefs, and "cognitive maps" on the performance of our professional responsibilities. Specific handicaps, for example, may lead us to exert substantial effort and resources to serve children affected by the handicaps, but in settings apart from us and other children so that we prevent ourselves the embarrassment attendant upon our own discomfort over their circumstance which we've never fully worked through. Our recruitment practices may persist in turning up white males as best qualified until we understand more fully that many of us, despite our genuine commitment to equal opportunity, are really unreconstructed Henry Higgineses who don't understand why people can't be just like me . . . and that is the operational reality on which a great deal of actual hiring has been based. These issues are particularly difficult to deal with because the structures out of which conflict is generated are inferred, never visible save in manifestations which by definition are not the structures themselves. Attitudes, beliefs, values, mental maps and the like cannot be

“found” and “rooted out.” The conflict generated from these causes, therefore, is extremely difficult to pursue, analyze, and resolve.

A third type of litigiousness grows out of due process concerns. Types of cases include personnel issues, disciplinary actions, assessment of student progress, and the like. Here the orientation is toward the internal practices of educational organizations. What are the rules of evidence? Are they fair? Who has access to data and procedures? Under what circumstances? What is meant by accountability? How is it operationalized? According to what mechanisms and rules?

A fourth category of litigiousness relates to governance. Collective bargaining, the concern about governance structures, committee processes, role definition within bureaucracies, and the relation between bureaucracies and governing boards on the one hand and the working stiffs (teachers and faculty) on the other are all involved. Here the orientation is to such issues as power, control, responsibility, authority, and legitimacy in such functions as budgeting, policy development, accountability, professional service, personnel, and working conditions.

None of these four types of concerns is new to education. And few of the specific issues are new either. What is new is the sheer quantity of them and the tendency, nay, almost the demand, that they be handled in some formalized manner based on the assumption that the process may well prove to be adversarial in character. Why is this so?

### *four conditions*

Briefly, I believe four conditions underpin the current litigiousness in American education. One is the profound success of the American system of education.<sup>1</sup> A second is the culturally pluralistic character of America. Third is the extent to which the educational system itself has been at times and in certain respects shockingly insensitive and biased. The fourth is the closing of our

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<sup>1</sup>Cf. David B. Tyack, “Do Schools Make a Difference?,” *The Andover Review*, Vol. 2, No. 2, Autumn, 1975.

last frontier by the forced abandonment of the assumption of general access to undiminishing upward spirals of affluence.

The success of American education is two-fold. Virtual universal access through higher education is one of these. It is unprecedented in history anywhere, and its implications are not fully understood, especially by us. The second success of the system lies in its accomplishments or, if not present, the assumption that it can and should make its accomplishment available to all. This condition assures that Americans know their rights, expect them to be delivered, and act accordingly.

The second condition is America's dawning awareness that we really are a people of many cultures and values and, a most important consequence of that, the obliteration of easy assumptions about the willingness of all peoples and groups to accept easily the values and attitudes of a presumed and ascendant majority. We have come to understand that our schools and colleges have largely been structured on assumptions, values, and attitudes about learning, life, and society which are not shared by everyone and perhaps not even by a majority. Once all educational levels came to serve all population groups in our society, conflict was inevitable. Given the authority assumptions and structures common to American schooling, it is hardly surprising that individuals and groups with competing, if not conflicting, goals and values would seek and employ mechanisms beyond those traditionally found in our educational institutions themselves in order to seek better accommodation between their own desires and what schools were delivering. To the denied or injured it makes small difference whether the method employed is a court suit or the legislative redress of policy or structure.

The third condition, candidly, is the insensitivity and inattention of the system to such matters as discrimination, bias, and due process. Whatever the reason for this, the condition remains obvious. In large measure, we have deserved and, until we make the necessary corrections, will continue to deserve everything we get!

Finally, the closing of the last frontier, the repudiation of the assumption that the true condition of humankind is an ever ascending spiral of affluence, has, I believe, been unconsciously under-

stood for some time, but it is now explicitly before us, most insistently, for example, as to energy and world food supply. In an open and expanding society there were always opportunities. But where the pie remains constant, what the games theorists call a zero sum condition, not everybody can be an equal or roughly equal winner (unless, of course, we come to adopt some of the same basic social and economic premises, for example, as Christopher Jencks). It becomes very important in such a situation that schooling at all levels be successful and be distributed as equally in terms of its results as is humanly and technically possible.

### *the professional task in education altered*

What are the implications of all this? The most obvious (and general) one is that the nature of the professional task in education is profoundly altered.

Let me give you some illustrations.

Record keeping is a prime example. On the one hand unless you keep records of everything you do and, to the best of your ability and self-knowledge why you've done it, you're in serious trouble when you get sued. On the other hand, if you keep the records, they may turn out to be your own worst enemy because then they are available for subpoena. To make matters worse, equivocation that results in records being kept on some things but not on others is widely interpreted as a demonstration of incompetence!

Time is a second consideration. Formalized adversary proceedings take unconscionable amounts. At this writing U.C.'s collective bargaining election was held fourteen months ago. The conclusion of the negotiation of the first contract is still not in sight. Preparing for and participating in actual suits consumes hours and hours. Formalized evaluation and assessment proceedings demand systematic data collection, recording, organization, and analysis. The result is voluminous portfolios, whether for the evaluation of students, faculty, programs, or institutions. And after construction, each portfolio has to be read — and read thoroughly.

Third, professionals in education require new kinds of support. When, for example, a local professional meeting of curriculum coordinators and assistant superintendents of instruction is devoted to an intense discussion of progress in securing malpractice insurance for its members, it's pretty clear that times have changed and the tools educators need to carry out their functions are rather different from what they have been. Just as schools and universities now have their ombudspersons, so increasingly will they have full time people with legal backgrounds or training to advise and counsel on all manner of professional functions and responsibilities from the classroom and dormitory on up.

Somewhere (said perhaps plaintively) there ought to be some implications for the rights of administrators in all this! Candidly, they're rather hard to tease out. The consequences of all the stress, however, are serious personally and professionally. On the personal side, people get sick and tired of being sued for doing their job, especially for doing it well. Professionally, the drawbacks arise from the loss to the profession or to administrative role of precisely those people of sensitivity our profession and our clients need most.

There are important implications at the conceptual level. How do we understand concepts like authority, control, power, role, function, participation, delegation, accountability, due process, and governance? How can these ideas be understood especially in the light of honest differences of opinion about the purposes of schooling and the relative standing of various stakeholders in the process to engage themselves in the issues they feel so strongly about?

There are important cost implications for litigiousness. Time is money. The support services cost. The emotional costs are real. We can't continue to add uncontrollably to the demands on everyone in the fashion we have experienced in the last ten years.

Finally there are implications for training. How do we train people for professional roles in education given the increased litigiousness? Can they get it before they begin or must it be on the job? Can we really expect educators to train for their chosen roles and then take a J.D. as the immediate prerequisite just before entering upon professional service?

My training in philosophy and history, for example, is now supplemented by a vastly increased although still woefully inadequate understanding of the way lawyers think and why they do it that way. That is not to say that other parts of my education have not proven to be important. That part of my philosophical training which taught me about language, that part of my political science training which taught me about government, that part of my historical background which now allows me to compare cultures and the way they manifest themselves at various times and circumstances, and that part of my training in psychology which taught me about motivation, human behavior under stress, and caring have all been important. But the job has changed, and, by implication, so should the training for it.

### *conclusion*

Let me conclude, telegraphically to be sure, with a brief statement of my own beliefs concerning all these implications. Unless we change the assumptions on which we have been working, the weight of formalized adversary proceedings in our profession will render it unable to perform its basic missions. I believe that resolution of our problems here lies in clarifying our own basic assumptions about the purposes of our profession, and in the unflagging insistence on structures and practices which assure due process as matter of course. It lies in exerting great effort to assure we work in institutions wherein professional roles are clearly defined and inter-institutional policy and other relations are constantly and consciously under examination, and where an important parallel activity is our continuing exploration and definition, together with the rest of the body politic, of wherein lie the bonds of community within our society as a whole.

*THE GROUND IS HARDEST IN THE  
MIDDLE OF WINTER*

People  
are always  
plastering themselves with band-  
aids, like their own  
mothers.

Or else  
flinging themselves on floors,  
kicking their heels  
in rages.

Their children  
who should be  
tender as crocuses,  
foolish and gawky,  
springing up  
before the last snow-  
fall of the year,

Come speeding past  
on Hondas, tough, fearless  
warriors, making  
holes  
with their heads  
in the wind.

And the old grand-  
parents,  
clear and delicate goblets,  
and a little  
hard of hearing,  
hop out of the way like rabbits,  
smile and smile.

PHYLLIS JANOWITZ



ELIZABETH SENIO

# The Boston School Decision

*Finding Monumental Cynicism*

THOMAS T. LYONS

Federal Judge W. Arthur Garrity posed the constitutional issue — “The paramount issue in this case is whether the defendants acted with a ‘purpose or intent to segregate.’” He ruled “. . . the defendants have knowingly carried out a systematic program of segregation affecting all of the city’s students, teachers and school facilities and have intentionally brought about and maintained a dual school system. Therefore the entire school system of Boston is unconstitutionally segregated.” So ruled Judge Garrity on June 21, 1974 in the Boston school decision, *Morgan v. Hennigan*. This essay is a study of that decision. Most Americans are familiar with the busing controversy, “Phases I and II,” the mobs in South Boston, ROAR, the motions and counter-motions of various lawyers, the appellate court rulings which unanimously support the trial judge, the comments of educators, politicians, sociologists, and the “man in the street”; but few are familiar with the legal findings and reasoning of Judge Garrity.

In 1975 the Paperback Booksmith bookstore in Boston decided to publish Judge Garrity’s decision, and they brought out a 75-page paperback, *The Boston School Decision* (\$1.50). On the first page Marshall J. Smith gave his reasons for this unique publication: “The job of a bookstore is to sell books; however, in a larger sense, it is a center for the dissemination of information to its community.

It is in this role that we at Paperback Booksmith decided to publish Judge Garrity's decision." That is the first and last editorial comment in the book. The next 75 pages are the unedited words of the judge. As in most trial court decisions the major portion of the decision is given to the findings of facts (pages 12 to 68). And those findings are devastating. They expose the "know-nothing" quality behind the political rhetoric on "neighborhood schools" and "residential segregation as the cause of school segregation" as monumental cynicism which fed racial fears and anxieties. The media, even the *Boston Globe*, which received a Pulitzer Prize for its coverage of the Boston school controversy, failed to tell the complete story which is contained in the Judge's findings. In my day-to-day teaching I met no one who had read the decision. I finally asked a student to pick up a copy for me, we read it, and then I used it in my urban studies course.

The plaintiffs in the case were Boston black children, and the defendants were the Boston School Committee. This has become a familiar story in America since the United States Supreme Court in *Brown v. Board of Education of Topeka, Kansas* (347 U.S. 483), on May 17, 1954, ruled unanimously against state segregation laws in public education with the famous words "separate but equal is inherently unequal." On that day the Court ruled against state claims that the Tenth Amendment left matters of school policy to the exclusive jurisdiction of the states and their police power. The Court concluded that state segregation laws constitute a clear violation of the federal constitutional rights of school children under the Fourteenth Amendment's stricture that "No state shall deny equal protection of the law."

In Boston, the issue was not whether the Boston school system was segregated. That was obvious to all. In 1971-72 there were approximately 96,000 school children in Boston, 61% white, 32% black, 7% "other minorities." One-third rode buses or trolleys to school, and over half the high students used such transportation. "At least 80% of Boston's schools are segregated in the sense that their racial compositions are sharply out of line with the racial composition of the Boston public school system as a whole. . . .

Racial segregation permeates schools in all areas of the city, all grade levels, and all types of schools." Judge Garrity documents the charge in the eighteen high schools, the fifteen junior highs, the four middle schools and the 150 or so elementary schools. "The teachers are also segregated. Seventy-five percent of Boston's black teachers are in schools more than 50% black. Eighty-one schools have never had a black teacher." The court's primary task was to determine whether the school committee had intentionally and purposefully caused or maintained racial segregation in meaningful or significant segments of the Boston public schools in violation of the Fourteenth Amendment. If the court found such administrative acts by the school officials, then such findings would place the Boston School Committee in a condition of *de jure* segregation (making arguments over *de facto* segregation irrelevant) and in direct violation of the Supreme Court's rulings in *Brown I* and in the 1973 Denver decision, *Keyes v. School District No. 1, Denver, Colorado* (413 U.S. 189).

### *authorities' actions examined*

Judge Garrity examined the school authorities' actions in (1) facilities utilization and new structures, (2) districting and redistricting, (3) feeder patterns, (4) open enrollment and controlled transfers, (5) faculty and staff, and (6) vocational and examination schools. The facts tell the story.

The schools of Boston were overcrowded, with acute overcrowding in some white schools and underutilization in many black schools. A not untypical action was the committee's decision to send students from an overcrowded, 91% white junior high, the Cleveland, past underutilized black schools to the more distant and overcrowded South Boston High! Busing was a viable alternative to overcrowding, but the Committee refused to relieve overcrowding by busing and held the racial lines. The use of two policies demonstrates the School Committee's segregative intent — the use of portable classrooms and the construction or purchase of new schools. In 1965 the Committee rejected portables as "educationally

undesirable.” Then the Committee reversed that position and used portables to expand the capacity of white schools so that white students could remain in white schools and accept white students fleeing black schools under the open-enrollment plan, especially between 1966-1971. The Committee said the portables were to relieve overcrowding, but overcrowding could have been relieved by simple redistricting! Judge Garrity goes on to detail the purchase or construction of four new schools, the Weld, Hennigan, and Lee elementary schools, and the new English High School, and to prove that the Committee made administrative decisions on pupil assignment, site location and/or feeder patterns in each case to segregate by race.

School district lines can be used to promote segregation or integration. Judge Garrity could find no example that the School Committee had ever changed a district line to promote integration. The Committee’s record from 1965 to 1974 had been one of uncompromising resistance to redistricting for desegregation. In fact the Committee had blatantly gerrymandered school districts to promote segregation. The Judge included maps, charts, and statistics in Dorchester to prove his case. The Boston Schools have long had multi-school elementary districts. These were used to promote segregation by assigning white children to white elementary schools and blacks to black schools without regard to which school might happen to be closer to the child’s home. So much for the neighborhood school!

### *feeder patterns manipulated*

The School Committee’s use of feeder patterns was important in the segregation of the high schools. The high schools did not have geographical districts of their own — they had a complex network of feeder patterns. This was more obvious in the nine city-wide high schools, but the practice was also used in the nine “district schools,” such as South Boston or Dorchester High Schools. Associate Superintendent Meagher “manipulated with

segregative effect" the feeder patterns. Boston had three patterns of pre-high school education, K-8; K-6, 7-9; K-5, 6-8. The first is a familiar old "8-4" pattern, the second is the "junior high" model, and the third is the new "middle school" idea. Middle-school advocates pointed to earlier maturity in teenagers, need for long-range career planning, and reducing the "drop-out" rate as reasons for dropping from 7-9 to 6-8. The facts are that Boston created only four middle schools, racially imbalanced, and used them to feed racially imbalanced high schools. Graduates of heavily white K-8 schools fed white co-educational high schools; graduates of heavily black lower schools went on to predominantly black English and Burke High Schools; and graduates of predominantly white lower schools were fed to white junior highs and on to white high schools. Six of the nine district high schools had grades 10-12, and they were fed by white junior highs. The three district high schools with grades 9-12 were South Boston High, East Boston High, and Burke High for Girls. The first two were fed by whites, and the third primarily by blacks, and in September, 1967, were 100%, 99%, and 25% white respectively. In 1967-8, Boston English High School was 18.5% black, and by 1969-70, English was 76% black and enrollment had dropped from 2,103 students in 1967-68 to 977 in 1971-72. These changes were the result of manipulated feeder patterns. Garrity ruled, "The only consistent basis for the feeder pattern designations, changes and deletions was the racial factor . . . the consequence of the feeder pattern changes in combination with the opening of four middle schools was altogether foreseeable . . . a dual school system." Garrity concluded:

Black students generally entered high school upon completion of the eighth grade and white students upon the completion of the ninth. High school education for black students was conducted by and large in city-wide schools, and for white students in district schools. White students were generally given options to enable them to escape from predominately black schools; black students were generally without such options. The advantages and disadvantages of the introduction of middle schools were experienced almost entirely by one of the races, the black. The ad-

vantages and disadvantages of coeducation were experienced mainly by one of the races, the white. The high schools to which black students were channeled, especially English, changed in racial composition virtually overnight.

Open enrollment began as a policy in Boston in 1961 to allow students to enroll in schools with underutilized seat capacity outside the student's school district. "Operation Exodus," a community-financed and led group of blacks, used open enrollment and busing to bring about desegregation. But by the late 1960's open enrollment was a means for "white flight" from schools with increasing black enrollments. Yesterday's tool for desegregation became today's tool for resegregation! From 1966 to 1971 the Massachusetts State Board of Education brought pressure under the State Racial Imbalance Law of 1965 to stop this use of open enrollment. Open enrollment never had the segregative effect of facility utilization, districting, and feeder patterns, but its use in 1966-71 was clearly segregative and substantial. After 1971 open enrollment was replaced by "controlled transfers," which the state held must work for racial balance, but the Boston School Committee permitted so many exceptions to "controlled transfers" as to make the state's intent a mockery. One such exception was a "hardship" transfer, and that term was interpreted very loosely by school officials.

### *black teachers segregated*

The small group of black teachers in Boston was segregated in 1972-73. Of 4,243 permanent teachers only 231 (5.6%) were black, though blacks made up 16% of the city's population and 33% of the public school population. Black students were a majority in 59 of the 201 Boston schools; and of the 356 black teachers (permanent, provisional, and substitute), 224 were in those 59 schools. Approximately one-third of the schools had a majority of black students, and those schools had about two-thirds of the black teachers. Eighty-one of Boston's 201 schools had never had a black teacher!

The picture for black administrators was worse. In 1970-71 the three black principals and the fourteen assistant principals were in majority black schools. Judge Garrity pointed out that schools with a majority of black students in Boston had less qualified, less experienced teachers and a much higher turnover rate. Unequal educational opportunity was evident for students and teachers.

Judge Garrity demonstrated "intentional segregation in a meaningful portion" of the Boston school system's exams schools (Boys' and Girls' Latin, Technical High School) and the vocational schools.

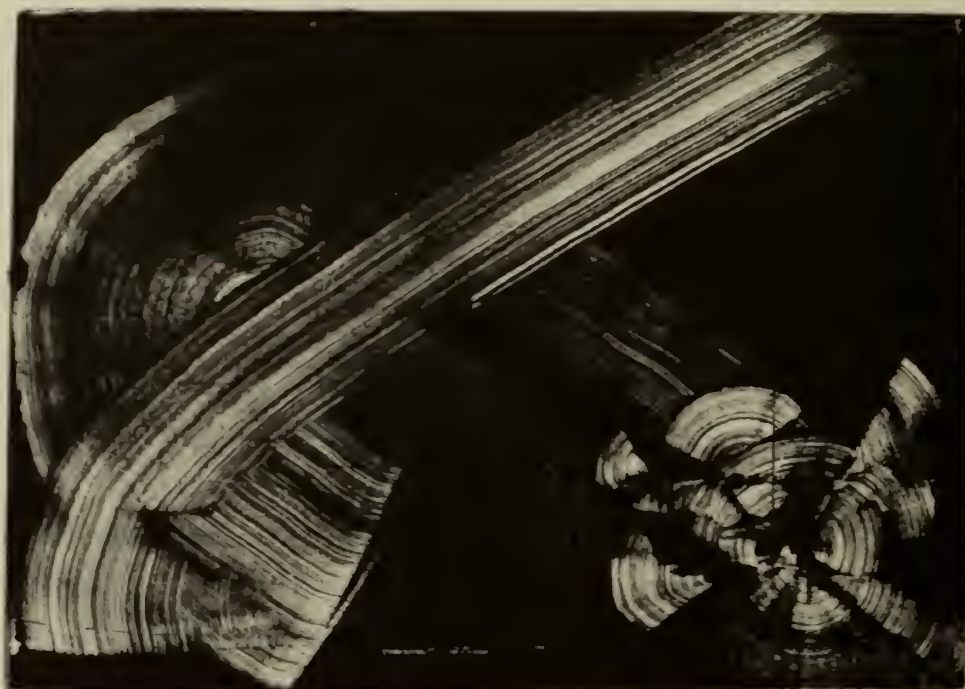
### *policies create segregated schools*

School committee representatives and many politicians had long held that Boston's racially imbalanced schools were the result of (1) the rise in the proportional number of blacks in Boston and residential segregation and (2) a time-honored neighborhood school policy. But Judge Garrity's facts proved that the Boston School authorities' policies on faculty staffing, redistricting, open enrollment, controlled transfers, and feeder patterns often went against residential patterns to create segregated schooling in relatively mixed neighborhoods. And school construction and facility utilization reinforced the effects of residential segregation on the schools instead of working for desegregation. Garrity also showed that historically Boston school construction, the Boston Housing Authority, the Federal Housing Authority, the Boston Bank Urban Renewal Group, and private realtors had followed policies which promoted segregation. Judge Garrity pointed out the fraudulent aspect of the neighborhood school argument by the ways busing, gerrymandered districts, open enrollment, multi-school elementary school districts, magnet schools, city-wide schools, and feeder patterns were used by the school authorities to vitiate the neighborhood school in the interest of racial separation.

Judge Garrity asked, Does racial segregation exist in parts of the Boston public school system? *Yes*; Is such segregation intentional

by the school authorities? *Yes*; Does such segregation involve a substantial portion of the school system? *Yes*.

I have not mentioned the other pressures on the Boston school authorities such as the Massachusetts Racial Imbalance Law of 1965 and the long and frustrating efforts of the state to enforce that law (the Massachusetts Supreme Judicial Court upheld it and ordered it into effect in early 1974). Nor was mention made of the successful efforts between 1972 and 1974 of the United States Department of Health, Education and Welfare, the National Science Foundation, and the Department of Housing and Urban Development to cut off federal funds under Title VI of the 1964 Civil Rights Act in an attempt to force Boston school authorities to reverse their segregation practices and move towards desegregation. Nor was attention given to the agonizing process of implementing Judge Garrity's order to desegregate the schools. The significance of the June 21, 1974 decision — as any reader of *The Boston School Decision* will readily discover — is the mountain of evidence which W. Arthur Garrity uncovered of a decade-long conspiracy by school authorities to deprive black school children of their constitutional rights.



RICHARD O'HARA

# A Chain of Ironies

*The Court Closes*

*the Peter Faneuil Shool*

JANE MOULTON STAHL

TO public school parents in our Boston neighborhood, Phase II has been an ever-lengthening chain of jarring ironies. The first and cruelest of these was the School Department's decision early this past July to close the elementary school, the last remaining in our community of 15,000. Our immediate and successful appeal to the School Committee to rescind the closing was presented to the Court for the required approval. However, a week later, with due deliberation and no visible reluctance, Judge Arthur Garrity refused to grant the petition to re-open the school, stating that it was too late to re-assign pupils for the coming year without endangering the designated racial balances. His few additional remarks about the "deplorable" condition of the school building proper and the palliating promise of a brand-new facility in our district further underscored the futility of our short-lived campaign to preserve what we believed the Court was aiming for, namely, a racially mixed and harmonious environment where academic standards were high and community resources plentiful. Six turbulent months later, we have come to see what we failed to understand then, the shuffling of races by numbers has become the paramount value, and the malign neglect of the School Department has been complemented by the autocracy of the Court.

Though it may be difficult to believe, in the face of the legendary disrepute of the Boston school system, scattered about the city there

are several examples of the urban neighborhood school at its best. Generally the common attributes of these phenomena are a stable community, reliable and often imaginative teachers, strong parental influence and neighborhood resources, libraries, museums, colleges. Such advantages in conjunction with the basic, though meagre, elements supplied by the School Department have produced students of high calibre, accepted by competitive secondary schools, both public and private. Some schools, like ours, further enhanced by a rich mixture of racial and economic family backgrounds, act as catalysts to bring together at the most basic social level parents, children, and teachers of widely varying viewpoints, in turn strengthening the sense of community in these highly heterogeneous neighborhoods. Parents who participated in the life of our school, raising money for field trips and supplementary materials, staffing the library, teaching poetry-writing, and giving laboratory demonstrations, took pride in and drew sustenance from this experience in making the system work.

Intimations of the school's mortality were in the air at the outset of the year in September, 1974, when three unrelated orders from above converged to cut the pupil population in half. Phase I cancelled the Exodus program of voluntary busing which over the past seven or eight years had brought in some forty black children to complement the mainly white and "other" (primarily Chinese and Indian) racial representation. Also Chapter 766 required that the sixty children in a Special Class curriculum be dispersed to other locations, and last, an administrative fiat of dubious merit transferred city-wide sixth grades from elementary to middle schools. Recognizing the vulnerability of a half-full school, the Parent-Teacher Group, unaffiliated with the official and company-run Home and School Association, wrote John Coakley, then head of the Planning Department, urging him to include our genuinely and demonstrably magnetic school in the plans for Phase II. Indeed, late in the spring, we were informed that 125 black students from the Dudley School in Roxbury would be enrolled in the following September. Most of us were enthusiastic and optimistic about the challenges that would bring. A few parents chose to place their children in parochial and private schools.

What happened between the end of school in June and Judge Garrity's final verdict six weeks later has been a matter of gamut-running speculation. The most plausible explanation is that someone somewhere in the depths of the Planning Department belatedly realized that the Quincy and Abraham Lincoln Schools in the Chinatown-Bay Village area would be without white children in the very likely event that the Charlestown families hesitated to accept their children's assignments to those schools. We were an easily transportable, predominantly white group who would probably do what we were told. This has turned out to be accurate in the event, if not in the intention. There is another theory that veers toward the paranoid, but is not without weight. The school so summarily closed was the Peter Faneuil; our neighborhood, Beacon Hill-West End. The knee-jerk response to that fabled location, from all segments, is liberal, elite, white, powerful, and rich. Beacon Hill under fire evokes as much sympathy as New York City facing bankruptcy. Local pols laughed and said, "Look who's a bigot now." One of Judge Garrity's experts pointed out that elitism has no place in public education. Other expressions of popular sentiment were variations of the theme that it was high time Beacon Hill found out how the other 98% lived. The facts that the local Brahmin plutocrat wouldn't know the Faneuil School from the Chardon Street Home (also part of our neighborhood), that our most conspicuously powerful White, the Mayor, sent his children to private schools, and that in addition to the handful of professional (not rich) families in the school there have been many of modest and lesser circumstances, without property, cars or other liberalities did not alter the stereotypical view to which the school fell victim.

### *community receptive to integration*

Whatever the reasons may have been for closing the school, Beacon Hill-West End, a community fully receptive to racial integration, is now the only section of Boston where 100% bussing is required of all children, kindergarten through high school, with the

attendant result that the community, qua community, has been eliminated from any role in this most critical period of Boston's life. To be sure, some parents will find their way (diagonally across the Common and straight through the Combat Zone) to the activities at the new district school, but our outstanding cultural resources, the Afro-American Meeting House-Museum, the State Houses, old and new, the Museum of Science, the West End library, City Hall, Black and other Freedom Trails, will have to stay put, awaiting the bus loads of children being brought into our neighborhood.

### *reassigned to three schools*

Until construction of the new Quincy School is completed, the Faneuil children have been assigned to three different schools, 1st through 5th grades to the old Quincy in Chinatown (the first multi-classroom school in the nation, 1847) and the Abraham Lincoln in Bay Village, and the kindergarten children to the Prince in Back Bay. Two of these school buildings are in such debilitated condition that they have been on the "slated for closing" lists for years (the Faneuil has never appeared on any of these lists, some of which have included as many as fifty schools), and in fact, the Quincy and the Lincoln will be closed at the end of the year. The ex-Faneuil teachers and the black children formerly destined for our school were reassigned to the Eliot School in the North End, a longer ride for the bussees, a neighborhood markedly unfriendly to outsiders, with no community resources except some flourishing parochial schools and a version of ROAR called NEVER. Obviously, the parents of the Roxbury children have not turned up for school activities. In the latest ironic turn of events, our homely school building has been put into service to house two innovative programs for high school students, the larger of which is an Edco project to expose some 150 suburban teen-agers to the rich opportunities of Boston, from this ideal core-city location.

It would be tedious, painful and pointless to present the many ways we might have offered to re-work the racial balance in District 7. The point of outrage is that we had no voice, no representa-

tion, not even an observer in the planning of our children's and community's future, nor had we any recourse after the event. During our period of crisis in July, the court-appointed experts refused to meet with us, and we were not allowed to speak in court. Effectively the Court acted in the self-same arrogant and alienating fashion in which the School Department has excelled for years. To try to re-open the school in the light of the economic crunch, the threatened prospects of cutting 500 teachers and the closing of some thirty schools is folly. The old order has changed, and those of us who can face it have joined the struggle in its new locations.

It is difficult to assess the effects of changing schools on our children. There has been continuous classroom upheaval in the implementation of Phase II; children were still turning up for the first time in their assigned places in December, and in general, circumstances have not been conducive to getting the best out of teacher or pupil. Although the academic pace has perceptibly lessened, children in the lower grades seem to be progressing satisfactorily. Those of us with children in the fifth grade are somewhat uneasy, not only because of what they may be missing intellectually but also because of the decisions we must make toward placing them in a sixth grade somewhere. There has been a very good sixth grade this year at the Mackey, a newly magnetized middle school in the South End. Whether or not our children will be accepted for admission will depend upon the racial quotas and the numbers of applications. Whether or not that very good sixth grade teacher will be there next year depends upon her ranking in the inevitable scramble for teaching jobs. Many of us expect our children to take the SSAT's next year for seventh grade entrance to the Latin Schools. Whether or not there will be a seventh grade at the Latin Schools in 1977 depends upon the Court. It barely survived last spring's planning decisions. Whether or not our children will be accepted at the Latin Schools will depend again on the racial quotas, numbers of seats as well as examination results. The changes in the system wrought by Phases I and II and the prospect of unlimited uncertainties in the Phases ahead tend to exhaust one's commitment to public education.

There has not been much incentive to organize the parents at the Lincoln or Quincy Schools this year, first because we must start all over again next year at the new Quincy and second because the Court required our electing Racial-Ethnic Parent Councils. Although it could not have been Judge Garrity's intention to accentuate racial isolation among the parents, this was certainly the effect of the elections in October, where we were asked to caucus according to race, "whites to the left, blacks, right here, and 'other' (Chinese, Hispanic, Indian, whatever) over there." We duly elected our two delegates plus alternate of each color, and the Councils have met sporadically since then to discuss the handling of the racial incidents in the opening weeks of school and the quality of the peanut butter in the school lunch. These Councils are by no means an adequate vehicle for parent involvement, particularly in schools where there has been no precedent of administrative-parental cooperation. Their limitation by size plus their mandate "to monitor," restrict and thwart potential parent energies that might otherwise focus on larger issues of school life. The Advisory Councils, however, comprised of delegates from the individual schools to groups-at-large, have in some instances seized the opportunity to get their feet in the door. The Community District Advisory Council for our District 7 has written Judge Garrity to demand representation in the plans for next year. It is to be hoped that the recent CCC-CDAC pro-forma hearings did not represent the extent of his willingness to accept community and parent participation.

### *archetypal confrontation*

Some of us have joined the Committee on Learning, a part of the Quincy School Community Council, a group that was formed in 1969, when plans were initiated to replace the old Quincy School. How the School Department and the Court will respond to this group, currently seeking a voice in the selection of principal, faculty, and curricula, will be of surpassing interest to the many QSCC workers who have spent years putting this Community School together on paper. The situation presents all the elements of the

archetypal confrontation: community residents (multi-ethnic, but primarily Chinese), neighboring institutions, and resources (Tufts-New England Medical and South Cove YMCA), various representatives of the School Department, and the Court. The Chinese population in the view of many has been blatantly exploited in Phases I and II. Hundreds of Chinese students at the elementary and middle school levels have been bussed into areas where black children are most unwelcome (the North End and Charlestown) to act as a buffer zone and to alleviate the racial imbalance on the turf of the not-so-latent resistance movements. It appears likely that they will not be reassigned to their new neighborhood school, except through the means of enrollment in the Chinese bi-lingual sub-school.

Current reports from the School Department indicate that more than 9,000 children, 10% of the pre-Phase I enrollment, have left the public schools. Almost simultaneously, the U.S. Circuit Court of Appeals, in upholding the Federal Court's efforts, has said that white flight cannot and should not be a matter of concern to Judge Garrity. By extension, this implies that the viability of the city's neighborhoods are not his department, either. Yet white and black flight and the life of the city are undeniably locked together. To those of us who live in Boston in as permanent a fashion as possible, our schools and our neighborhoods are our life-sustaining expressions of commitment. If the Court, in its finite wisdom, cannot find the means to employ the best efforts of the citizenry in its work to reconcile public education with the spirit of the Constitution, the operations may or may not be successful, but the city will most certifiably be lifeless.



CLARISSE ROBERTS

# Public or Private Education

## *The Impact of the Fourteenth Amendment*

G. LAMAR CRITTENDEN, JR.

American public schools traditionally serve the residents of small, narrowly defined geographical areas. Their operations are financed in large part by local property taxes, and they are run by local officials. Small wonder, then, that we tend to feel a proprietary interest in the public schools in our communities.

But in the eyes of the law, a public school is not the property of the people who live near it. It is part of a governmental program to provide services, like welfare or medicaid. As such, it is subject to the Fourteenth Amendment to the Constitution of the United States, which provides in part that no state shall deny to any person within its jurisdiction the equal protection of the laws. The Fourteenth Amendment has been the basis of extensive federal legislation and a number of judicial decisions requiring racial integration of the public schools. Within the purview of the law in this area, the power of federal courts over public schools is virtually absolute.

In December of 1975, the residents of South Boston, Massachusetts, learned firsthand the full extent of this power. Having found that local school officials were not adequately complying with his orders in a desegregation action, United States District Judge W. Arthur Garrity, Jr. appointed a receiver to take charge of the operation of South Boston High School. Not even the closing of the school, as requested by the N.A.A.C.P., would have had implications as drastic as those of the judge's order.

In the event of a closing, South Boston's students would have been transferred to other schools under the superintendence of the duly constituted local authorities. What in fact occurred was that a federal court wrested control of the school from the hands of elected and appointed officials and itself assumed the function of running the school.

The people of South Boston, already rankling under requirements that students be bussed to and from the area to achieve racial integration, viewed Judge Garrity's order as the final step in a series of acts depriving them of the right to an education of good quality for their children.

It can hardly be denied that the turmoil resulting from desegregation through bussing has adversely affected the quality of education provided in South Boston. The truth of the matter is that no "right" to the best possible education exists under the present law. The focus of the Fourteenth Amendment is not upon the quality of education received by an individual, but rather upon the services of a governmental unit being provided on an equal basis to all persons residing within that unit. If the implementation of this principle reduces the quality of education received by an individual, the law treats this result as unfortunate but necessary.

I think it is fair to say that the majority of the people of South Boston believe that integration, though desirable in itself, cannot properly be achieved through forced bussing. I will not presume to express an opinion on this issue. The point that I am pursuing has nothing to do with the rightness or wrongness of Judge Garrity's rulings; it has to do with the manner in which a federal judge obtained the power to make decisions with such extreme local consequences. The experience of South Boston illustrates a point of general applicability: that when people entrust a phase of their lives to the government, they must give up some measure of their freedom.

Parents and educators in South Boston should not have been surprised to learn that, at least when questions of racial segregation were concerned, they were not free to make decisions of great importance to themselves and their children. As a public institution, South Boston High School was subject to use for governmental

purposes different from, and even at odds with, the purpose of providing the best possible education.

Those who blame one judge, or recent changes in the law, for the events in South Boston are wrong. The law of civil rights is not, in the true sense, changing. It is, rather, developing, plodding forward on the course set for it in 1868, when the Fourteenth Amendment was adopted. Nor is the use of public schools to achieve social purposes a novel governmental approach. From its inception the purpose of the public school system has been to socialize as well as to educate. In some instances, social measures have adversely affected the quality of education. For example, mandatory attendance laws created problems which have had a negative impact on countless inner city schools.

The people of South Boston gave up the freedom to decide how integration would be accomplished in their schools when they allowed them to become, and to remain, public institutions. The key to the federal court's jurisdiction under the Fourteenth Amendment is governmental involvement. This is not to say that a private school may refuse admission to an applicant because of his race. Such is not the case. But private schools are relatively insulated from the impact of the law by their independence from governmental funding and control.

There are, at present, very few private schools to which the people of South Boston can turn as alternatives to public education. The system of financing public schools through local property taxes has compelled parents to spend increasingly large amounts for public education, whether or not their children attend the public schools. A logical result of this system has been to stifle the development of private education.

We in the United States value individual freedom very highly. Yet, through a sense of fairness, we have subjected ourselves to a complex governmental system designed to reduce economic and social differences. Living in this system, we are sometimes shocked to realize that we are not as free as we thought we were.

For those who see governmental encroachment on education as a problem, there is no all-encompassing solution. The answer certainly does not lie in seeking relief from the legislature with regard

to such specific issues as that of forced busing. Piecemeal attacks on the system, even if successful, do not change the basic situation. If parents and teachers want an educational system in which they can maximize their ability to decide how a particular child is to be educated, they must work to change the system itself. And the single most significant change that can be made to this end is the creation of a climate, through a restructuring of the tax laws or otherwise, in which private education can flourish to such a degree that it is available to large numbers of people.

### GENERATION GAP

He ought to have told you off  
There in the Garden.  
He should have said he wouldn't do it,  
That your ways were not his ways.  
He might have pointed out  
That he could do more good in the world  
Loving,  
Alive.  
If only he'd thought to insist at least,  
Firmly, politely,  
On having more time.  
But your fangs were showing.  
You were always right.  
You wanted blood.  
And so he gave in.

I can't say it's changed much.  
All of us are still paying  
In a lonely sort of way  
One by one  
For the old crime of wearing flesh.

MARGARET NEWLIN

# Ordway vs. Hargraves

ROBERT S. HARGRAVES

*Five years ago, Fay Ordway, a senior at North Middlesex Regional High School in Townsend, Massachusetts, sought and won an injunction in the United States District Court, Boston, to be allowed to continue her education at the school. We asked Robert A. Hargraves, Principal of North Middlesex Regional High School, to review the effects of this case five years after the event. What follows is Mr. Hargraves' review.*

It was brought to my attention on November 20, 1970, that Miss Fay Ordway, a Grade 12 student, was pregnant, but it was not obvious by her outward physical condition. I called Miss Ordway to my office and informed her in detail of school committee policy toward pregnant students: that she cease to attend all regular classes on February 12, 1971, the last day prior to the winter vacation. A detailed letter was sent to her mother also.

The criteria spelled out to assist Miss Ordway to finish her education and at the same time be a member of the graduation class of 1971 were the following:

- a. Fay would absent herself from school during regular school hours;
- b. Fay would be allowed to make use of all school facilities, e.g., library, guidance, administrative, teaching, on any school day after the normal dismissal time of 2:16 p.m.;
- c. Fay would be allowed to attend all after school functions;
- d. Fay would be allowed to participate in all senior activities;
- e. Fay would be allowed to seek extra help from teachers in after school help sessions when needed;
- f. Fay would be allowed tutoring at no cost if necessary; such tutors would be approved by the administration;

- g. Fay's name would remain on the school register for the remainder of the 1970-71 school year, terminating on graduation day tentatively scheduled for June 11, 1971;
- h. Fay's examinations would be taken periodically when mutually agreed upon between Fay and the respective teacher.

To maintain a degree of continuity in her program, Fay was allowed to stay in regular classes through January 29, 1971, the termination of the first semester; she was allowed to begin the second semester and thus gain a reasonable start for her second semester studies, and had to terminate her regular classes on February 12, the beginning of winter vacation and a good breaking off point.

From the time Fay learned she was pregnant, she was aware of the school committee policy. She would not be the first student to leave school and still be able to finish her studies. On January 28, 1971, Fay made an appointment with me. She informed me that she was seeking legal assistance from the Harvard Center for Law and Education in her quest to be reinstated in regular classes.

Miss Ordway, through her mother, requested the District School Committee to call a special meeting on March 3, 1971, and have in attendance the entire committee, the Superintendent, the Principal, Dr. F. Woodward Lewis, the family physician, Mrs. Iona Ordway, mother of Fay Ordway, Catherine Harris, a staff secretary for Law and Education, Attorney James Shaw, Attorney for the school committee, and the girl's attorney, Abelson and Peck. An appeal was made at the meeting to the school committee that Fay be allowed to attend school on a regular basis. Her request was made because of the detailed letter I had sent the mother stating that Fay would be unable to continue to attend regular classes after the closing of school on February 12, 1971, the Friday before the scheduled winter vacation.

There were several reasons why the school committee had adhered to the particular policy of non-attendance for pregnant students. One, the safety of the young lady could be impaired while in the school building; being jostled in the corridors could cause irreparable harm to the mother and unborn child. Two, and perhaps the strongest reason that I as principal upheld, the school was

over-crowded. It housed, and still houses, grades 7-12. Inasmuch as there were youngsters in our school ranging in age from eleven to nineteen years and these youngsters mingled during passing times and at lunches, the committee and I felt that to allow in school a girl known to be pregnant would leave the younger students with the impression that pre-marital relations were being condoned by the authorities in the school district. The school committee heard Miss Ordway's argument that she felt her education would be much better if she were allowed to stay in school.

The school committee indicated that the school district would provide her with special tutors at the district's expense and would provide her any other special requirements in order to complete her studies for graduation during her stay at home. The committee meeting ended by maintaining its policy. This policy prompted the summons to the United States District Court, Boston, Massachusetts.

The case was heard before Judge Andrew Caffrey. Several witnesses were heard, among them Mrs. Ordway, Fay Ordway, Dr. Lewis and I, high school principal. The hearing lasted approximately two hours. During my approximately forty-five minutes on the stand, I was cross-examined by Attorney Abelson. My complete testimony is public record. The thrust of my testimony was aimed at the argument against allowing a pregnant girl to attend a public junior-senior high school and be in the presence of eleven, twelve, thirteen, and fourteen-year-old youngsters. It was my professional opinion that the values of youngsters in the aforementioned age range were still flexible and that their values could be changed by the atmosphere created by the society to which they are exposed. This was recognized in Judge Andrew Caffrey's finding. Judge Caffrey also indicated that the condition of pregnancy would not interfere with the education of Miss Ordway or that of the other children.

Five years have passed since this case was heard. It is difficult to assess the impact this case has had on a national level. Its local impact has prompted the liberalizing of the policies in the Commonwealth of Massachusetts regarding the rights of pregnant students. It is my

opinion that this decision, with the Richards vs Thurston case, has acted as a catalyst for the instituting of the bureau of student services by the State Department of Education.

Although many administrators feel the wave of permissiveness went too far, we feel attitudes are now coming back into a more realistic pattern. My views have not changed on the subject of student pregnancy; but with the advent of Chapter 766 (special needs), the education of all pupils is now considered. Special programs can be worked out for any youngster in need. The program that was spelled out for Fay Ordway is a viable program today for pregnant young ladies. Even though these young ladies have a choice, the majority, whether married or not, have chosen a home study program.

### *A TALL GIRL*

you can't hear me can you so I'll  
say it you're so tiny tiny you are  
toy people toy cars toy brains I  
thought when I was growing up and  
up we live in a nation of dwarves  
no wonder there's trouble your  
gardens will overtake you wrap  
their tendrils around your tiny  
ears your little necks my legs  
stuck out between crib bars they  
shoved them back my hips ached  
growing pains they said damn right  
with fingers like that you can only  
shake hands with yourself stop  
whispering they said I said I'm  
shouting but the wind is blowing the  
words away they handed up bricks to  
put on my head taught me to smoke I'm  
puffing away on my herringbone patio  
I want a lover I said they said what  
we can't hear you what's that

NINA NYHART

# First Amendment, Where Are You?

*Not an Issue but a Cause*

TRUDY MARTIN

*We sympathize with those who fear, but we cannot and will not tolerate fear as an excuse for denial of constitutionally guaranteed rights.*

Flanked by an American Civil Liberties Union lawyer, in a well-attended San Francisco press conference, I declared those brave words of warfare, not just on my high school principal, faculty advisor and district superintendent, but on a well-established and omnipresent theory of secondary school education — schooling for passivity. My classmates and I had felt the oppression of censorship and stood on the threshold of our first sally into the field of legal battle.

Ignorance of rights and responsibilities both causes and reinforces the passive condition; and with this ignorance as an affliction, I and my schoolmates entered the ranks of legal activists.

In November of 1972 I was associate editor of the official student newspaper, *The Viking Press*, at Mills High School in Millbrae, California. Our November 17, 1972 issue was proceeding normally except, for some reason that has become irrelevant in the light of subsequent events, its contents had not been cleared with our faculty advisor. His reaction to our breach of protocol was instantaneous. He rushed around campus snatching all copies in sight off newsstands and even out of students' hands.

As students, we were not dumb or slow, myopic or particularly unworldly, apolitical or passive — quite the opposite; but when our faculty advisor stuffed our journalism into his closely guarded satchel, even our active imaginations failed to conclude that our rights had been violated in any legal sense. Our gut reaction and indignation elevated our opposition to the level of moral outrage but not to the level of asserting a *legal* right.

In November, 1972, we were living in an awkwardly transitional era; we were too close to the turbulence of the 1960's to be deaf to outcries against social injustice and establishment interference, but we were too removed from the activism of 1968 to escape the nostalgic return to school spirit and the happy family of smiling school administrators *in loco parentis*. As the best of public high schools in the best of upper-middle-class suburbs, Mills High School protected its self-imposed naiveté from the grim realities surrounding it. Discussions of the drug problem alone trespassed those protective barriers.

### *detrimental to school image?*

Fortunately, for the sake of our practical education, the November 17th edition of *The Viking Press* involved precisely that discussion. It mattered little that the article itself was ambiguous; later, the faculty advisor readily admitted this. The cause for his hasty confiscation lay in other places than the drug article's allegedly inaccurate or unsubstantiated claim: "It is impossible to deny that Mills contains, like most upper-middle-class campuses, a relatively high proportion of users of psychedelics." Instead, the faculty advisor saw this statement as being "inflammatory to the community" and "detrimental to the image of the school." It is significant that this appraisal never appeared in legal documents as a rationale for the censorship. But the argument was effectively used to persuade the student government to fire the editor. (I note parenthetically that our advisor, the persuader, also held the power of giving classroom credit and grades to most of us.) Of course, the

student leaders also cited the breach of procedures and condemned our editor for not requiring factual substantiation of the statement.

Within two days of the confiscation and the firing of the editor, I, as associate editor, was next in line to inherit the trauma. As part of a futile attempt to revive newspaper activities, my promotion was approved by virtual rubber stamp. I swallowed an intemperate urge to confront the advisor personally, and instead, moved quickly to print several letters to the editor (adding to them an editorial of my own) concerning the censorship. Within two weeks, we were ready to go to press with an edition which factually investigated the situation and editorially deplored it. My predecessor had fallen into the administrative trap of violated procedures. I intended to allow the advisor no such easy victory and so deliberately presented to him the materials before printing. They were refused. I stood in stunned amazement as he told me they were inappropriate for publication because they referred to something that did not "officially" exist, namely, the November 17th edition! Some two hundred copies had found their way into student readers' hands, but apparently he believed his official judgment could dematerialize them.

The preposterous irrationality of the circumstances struck me more fiercely than any other aspect. Naiveté has a fine way of creating outrages out of what greater sophistication might perceive as inevitable. Particularly aggravating was that I had even complied with the arbitrary notion of fair process that had been concocted to rationalize censorship.

Negotiations proved fruitless; the student government was cowed into accepting the tyranny imposed on our completely student-funded newspaper. The principal, in a frenzied attempt to create the image of a united institutional front, immediately sanctioned (with public support) the advisor's actions.

Organizational meetings were common to group action during the late 60's, the height of campus political activism; however, the phenomenon was an odd one for us and seemed conspiratorial. Fuming though we were at our betrayal, we felt very improper searching for the best strategy. Self-consciousness at flexing newly-discovered muscles and fears of recriminations finally buckled

when we discovered we had not an issue, but a cause. The fight assumed moral proportions, and the enormity of the battle matured our notions and intent with boggling speed. Here was an educational and journalistic issue involving pacified students, the printability of truth, and the complete abasement of already spineless administrators. Yet in our minds, the question still was not a legal one.

### *picketline accomplished goal*

One hundred of us marched against a biting December wind in front of Mills carrying picket signs querying, "First Amendment, Where Are You?" Ours were rhetorical questions telling much more about our hope than any belief in fact. It was a rhetorical invocation of a concept about which we knew very little. We were expressing more a hope that we had a right of free speech than a belief that we did.

The picketline more completely accomplished our goals than we had ever expected. Local media, with predictable interest in novelty, came out in force to gawk at protest, where protest had never been. Even administrative efforts to disperse the student crowd by summoning parents to retrieve their children were predictable. It was our first communication with the American Civil Liberties Union that sent shock waves of a new awareness reverberating through our lives. The impact came not from the ACLU's attentiveness, for we had attracted plenty of attention and we knew the ACLU lawyers read the papers. Rather the shock came from the new reality of the previously inconceivable, the very idea that the school and its "agents" might have violated civil liberties that were rightfully ours under the First and Fourteenth Amendments of the Constitution of the United States of America. We were told that they had probably broken the civil law, and law became the savior with the ACLU as its band of disciples.

We were at first very reluctant to believe the charge, even though the possibility of illegality intrigued us. Retrospectively, I wonder whether our volunteer attorney from the ACLU lost more

sleep over the prospect of trying to convince the judge or of trying to convince us of the existence of our rights and their violation. We, as journalists, should have been in the position to know and exercise our civil liberties. But we did not really know; and that was sad.

The lawsuit was a civil rights complaint for declaratory relief: we wanted to prevent school officials from executing any repeat performance of unwarranted interference with our right of free speech. Our desire was not new; the method we finally used was new to us. More than that, it was inconceivable. Both an end of old attitudes and a beginning of new ones, the suit became a commencement in the colloquial sense. It thrust our troupe of budding journalists into a real world where institutionalized methods for producing a compliant student body could be challenged by law. By ending mental impotence, the legal process had the potential of substituting responsible power.

### *legal process a radical act*

As we later came to realize, pursuing the establishment's legal process was our most radical act both against the establishment and in our own self-education.

The ensuing drama was shrouded in a certain mystique. How do sixteen-year-olds react to "injunctive relief," "guardian ad litam," "affidavits," and "praying to the court"? Our enchantment was reinforced when the Federal judge responded to our first hearing with indignant and impatient statements that literally argued our case for us. "I am intrigued with the idea of one person knowing all the facts," Judge Peckham said sarcastically of our advisor's presumption. "In our system, it requires a jury of twelve responsible and collective minds to determine truth. Has fact-finding become so simple that one person can do it?" Then, without warning, the spell-binding mystique vanished at our second hearing when the Judge rapped his gavel to announce that the final conclusion

by an out-of-court settlement had to be sought in the adjacent jury room.\*

Rather than seeing us as unique people in a unique situation, the judge told us that our cherished legal issues had already been settled by many cases before, and that our insistence on a formal hearing would be unnecessary for precedential value, as well as an undue demand on the court's schedule of more important cases. There he sat in somber garb telling us there was already adequate law on the subject. So we learned that we, too, were expected to, and did, strike a voluntary settlement.

The final court stipulation and order simply formalized a "compromise" proposed by the school district's representatives and grudgingly accepted by us. According to the agreement, the principal was left with power to determine violation only of education codes forbidding publication of obscene or libelous material, or that which "presented a clear and present danger to the lawful enforcement of school discipline." Substantively, the order had solved little. Not only had it deprived us of a symbolic victory; it had failed to render even the most practical assistance.

We were disappointed and angered. We resented very strongly that both the content and method of the resolution had been imposed upon us. We had coveted a personalized victory after full-scale battle, unaware that alone such a decision would have accomplished as little as many court decisions before ours. But we did not dismiss the importance or the "goodness" of the system itself. We immediately attributed the outcome to human causes: on the day of the second hearing, a previous case had subjected the judge to several hours of dry testimony, and it was late in the day before a three-day weekend. In spite of our awareness of the human dy-

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\*The *Fujishima v. the Board of Education* case, we later learned, presented a similar course of events. In that case, two students at Chicago's Lane Technical High School had won a court victory such as we sought against their Board of Education. One year later, however, two more students were denied their rights in the same manner as had their predecessors. The administrators had simply ignored the final court order. Rather than spend court time again on the same complaint, the judge in Chicago ordered an out-of-court settlement to adopt by agreement constitutionally valid procedures.

namics of the situation, we did not appreciate the logic that Judge Peckham must have employed.

Though good legal decisions must serve as the vanguard to the solution of battles over high school student rights, all the rules and interpretations and articulate words are impotent if not supported by fundamental acceptance of the final decisions by the individuals involved. Paradoxically, for those very reasons, any solution to our complaint had to come from a willing and cooperative settlement such as Judge Peckham had forced us to seek. Ultimately the compromise failed, because the school's peculiar character depended upon maintaining *in loco parentis* control over the student population and placating the community.

Three years after the conclusion of the court hearing, Mills' student press situation has regressed. This last year, a drug survey was denied distribution, as well as publication. It was not libelous; it was not obscene; it was simply unacceptable to the school officials.

### *perception becomes realistic*

With the compromise of our case in early 1973, the legal process fell in our estimation, slid off the impossible pinnacle upon which we had so eagerly placed it. In a short time our perception became a more realistic and functional view of the strengths and inevitable inadequacies of the legal process. By coming into direct contact with the constitutional system, we had been enormously educated. Our administration *was* legally wrong — the system itself readily acknowledged the validity of our charges — and we had discovered that there were people who respected civil liberties and demanded their application to the student condition.

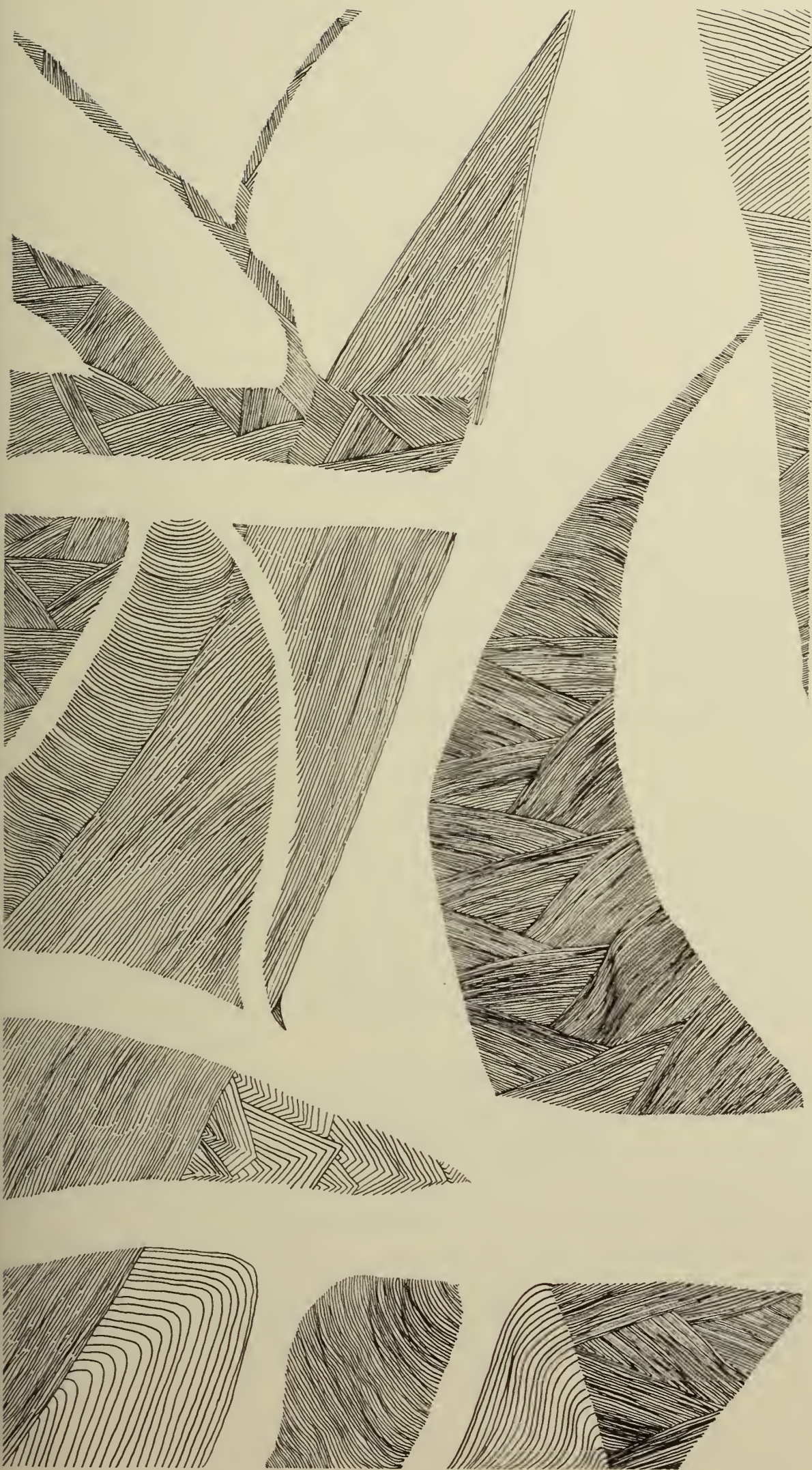
By itself, that may seem insufficient to have mitigated our predictable anger at being cheated of a clearly warranted victory. But our reactions did not come from any sudden reversions to compliance; rather, they proceeded from a more mature, if somewhat disillusioned, perspective on our dilemma. During the course of the

censorship, protest, trial and final agreement, our attitudes definitely changed.

In the beginning, we were nearly overwhelmed by the enormity of the issues. They seemed undeniably global in proportions. So many questions tormented us: about authority, morality, truth, freedom of the press, the ethics of journalism; what to do about people who refused to respect those ethics, refused to allow students responsibility for their actions, about people whose decisions were governed by fear. Legal and constitutional issues did not initially concern us. When they did, we clung to them as the definition of all our problems and the essence of effective solution. For the sake of order and convenience, we sought all the answers in those narrow terms; in so doing, we unjustly burdened the legal process itself with impossible expectations. This conclusion cannot be construed as arguing benefits of ignorance or as arguing evils of affording students legal knowledge. Schooling for passivity rests equally on both those concepts. Instead, the conclusion substitutes complexity for simplicity.

### *answers*

The answers were not simple; that realization produced the most dramatic of all our changes in expectations. Law could not accomplish everything, but without it there could be nothing. Ultimately, the battle taught us the necessity of coping with that complexity and seeking resolution in many places. We used the law and continued to read decisions handed down across the nation, questioning their applicability. Many of us later invaded legislative offices lobbying for liberalization of education codes regarding student expression. We spoke, and still speak, on many campuses, in conferences and workshops, sharing our modest insights, and helping students who wanted as desperately as we to destroy the barriers preventing their development into citizens, knowledgeable of their rights and with perspective enough to exercise them competently and boldly. An on-going process, it is the task of educating the educators.



## BIRTHDAY CARD

In your nineteenth year  
do you envy the fruit fly  
its simple inheritance,  
you with a brown eye  
of science,  
a blue of poetry;  
with one cautious hand  
hiding in a pocket  
while the other becomes  
a fist?

Remember the Moebius strip  
you made when you were twelve?  
Sprinting into the future  
you travel a road that curves  
through the past,  
pausing at the shtetl,  
dallying in an Eden  
of books. Ahead  
the first cell waits —  
it too was divided.

Today,  
from your civil skirmishes  
consider the possibilities  
of truce.  
Consider Chekhov,  
William Carlos Williams.  
Meanwhile, happy birthday;  
write home.

LINDA PASTAN

# Law in a Free Society

## *Inform Their Discretion by Education*

TOM E. POLLOCK III

*Public education in law is essential to a working democracy. Citizens who do not know their rights have little advantage over subjects who have none. . . . As ignorance of the law is no excuse for lawless acts, a society which leaves its citizens ignorant of law will have no excuse for a lawless nature. Law is far too important to be left to the lawyers. Knowledge is power, and the knowledge about the legal system is not a luxury but an elemental duty of citizenship. (Statement of Ramsey Clark, former U. S. Attorney General, testifying before the Subcommittee on Representation of Citizen Interests, of the Committee on the Judiciary, United States Senate, October 9, 1974.)*

Throughout America today there is a notable movement to enrich civics and social studies curricula in elementary and secondary schools with more accurate, updated, and stimulating content focusing on our legal system. The extent of this movement is demonstrated by the fact that the American Bar Association has compiled a catalogue of over 300 law-focused educational projects currently in existence.

The reasons for the increasing interest in law-related education are as varied as the programs themselves. Current federal involvement can be traced back to the nation's reaction to the ease with which young Americans were "brainwashed" into rejection of the American system of government during the Korean conflict. In addition there is felt a need to develop productive channels for the energies of youth which in the late 1960's seemed to have been wasted in futile violence and illogical rhetoric that revealed deep mistrust and serious misunderstanding of the American legal system.

Statistical measurement of attitudes and knowledge corroborates the notion that knowledge and understanding of our legal system is at a frighteningly low level: during a CBS poll in the early part of this decade, more than 50% of those who were asked refused to support a petition which turned out to be our own Bill of Rights; and in the fall of 1974, Congressional testimony included the following:

The National Assessment of Educational Progress' study on "Political Knowledge and Attitudes 1971-1972" indicates that only 9% of American 17-year-olds understand the Supreme Court's decision making process.

Constitutional Rights Foundation research shows that only 22% of Americans 17 years old believe that unpopular opinions about race and religion should be allowed on radio and television.

Considerable support for increased law-related education comes from groups who see it as a means of reducing crime. For example, much of the federal funding in recent years has come from the Law Enforcement Assistance Administration, an arm of the U.S. Department of Justice. The President's Commission on Law Enforcement and the Administration of Justice summarized the thoughts of these proponents:

No system however well staffed or organized, no level of material well-being for all will rid a society of crime if there is not a widespread belief that by and large the government and the social order deserve credence, respect and loyalty.

Will law-related education have this result? Some evidence gives hope that it will. One student reported, after having participated in a Los Angeles high school program focusing on criminal justice:

One of the things we struggled with in our class to prove is that police are human beings . . . We have [also] decided the first thing to do if you want to change the system is that you have to become involved in it.

The general evaluation of the program indicated that it resulted in significant improvement in attitudes towards police, substantial increases in student knowledge, and stimulation of interest in careers with justice agencies.

There are two fundamentally different categories of law-related education. One is education in the basic processes and the fundamental principles of our Constitutional system of law. This is the chief thrust of the majority of law-related educational projects. The other category is substantive treatment of specific subjects such as marriage, landlord/tenant law, the law of contracts, consumer credit mechanisms, employment rights and responsibilities, the specific content of criminal law.

The second category has not received the substantial emphasis that the first has, primarily because of the undeniably greater importance of educating citizens in society's basic principles and processes. However, in my opinion, substantive legal education in secondary schools should not be permitted to remain in its neglected status. One function of our schools is to prepare individuals to function effectively and to realize the greatest possible self-fulfillment in their post-school life. All American life seems to be governed by laws, and there is no reason to expect a reduction in either the number or complexity of legal regulations. Day-to-day "cope-ability" will depend increasingly upon at least some familiarity with the primary fields of law that affect the daily lives of American citizens; I believe the last two years of secondary education should bear this responsibility in much the same way as they bear responsibility for home economics and vocational shop training programs.

In the mainstream of law-related education, the area of basic principles and processes, there is an endless flow of new curricula and methodology, as varied as the objectives and imaginations of those creating the programs. Some emphasize conveying information about our Constitution, three-branch government, and other standard "civics" course subjects, but using new techniques and current topical subject matter. Others are more concerned with developing students' abilities to understand the philosophy of law.

One example of the latter is the program in the public elementary, middle, and high schools of Rockford, Illinois, which uses, among other methods, the open-ended discussion technique known as "values clarification" to study fundamental social needs, processes,

rules, and conflicts. Another example is the fascinating project created by the Constitutional Rights Foundation in California and implemented in three Los Angeles "high crime area" high schools. That project employed a teaching technique in which students were trained to teach each other and which, in addition, utilized student-developed teaching materials as well as resource personnel from every Los Angeles County justice agency and law school.

A third, and in my view the best, example of the "philosophical" approach is the Law in a Free Society program sponsored by the California Bar Association and developed by it with assistance from the University of California law faculty and University Extension, U.C.L.A. The project began with a review of available civics curriculum materials. Three hundred teachers and the project staff produced a thorough critical review evaluating traditional methodology and materials and articulating 21 practical and precise objectives of civic and legal education. The project then developed a complete curriculum for use in kindergarten through the twelfth grade, together with a curriculum for use in training teachers to present the materials and concepts in their classrooms. Separate curricula materials are organized around eight key concepts, which were selected as the most fundamental to a constitutional democracy:

authority, justice, privacy, responsibility, participation  
diversity, property and freedom.

Casebooks, lesson plans, teachers guides, student resource books, filmstrips, and other materials were produced. Techniques of role-playing, game simulation, mock trials were refined and created. Local attorneys and law enforcement personnel of all types were integrated into the program. Thousands of teachers were trained in pilot programs, and hundreds of thousands of students were reached. The project's Executive Director, Charles N. Quigley, has characterized it as "education which is designed to foster among students an informed and critical understanding of and reasoned commitment to those fundamental values, principles and processes essential to the preservation and viability of a free society. It is directed at the development of knowledge of processes as well as

facts, and the development of problem-solving skills using the values and analytical potential which children possess from an early age. It is education which endeavors to provide students with the competence to live and participate effectively within a constitutional political system."

This last example of the law in a free society project exemplifies the common theme of hope that runs throughout all law-related educational efforts; it is the hope of many educators and members of the legal profession alike that the efforts of those who have responded to the obvious needs for revitalization of our constitutional foundations will receive the support of our communities, educational institutions and governments that will be necessary to follow fully the well-known advice of Thomas Jefferson:

I know of no safe depository of the ultimate powers of the society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education.



KARIN CAFAZZO

# Legislating Equality in Education

## *As Maine Goes*

J. B. SATTERTHWAITE

*For the purpose of public instruction, we hold every man subject to taxation in proportion to his property, and we look not to the question whether he himself have or have not children to be benefited by the education for which he pays. . . .*

— Daniel Webster (1821)

School busses in Maine roll unaccompanied by marching mothers or rioting roisterers; racial equality is not an an issue in the Pinetree State. Nevertheless there are signs of unrest in this educational outpost. Last summer a group of what the *New York Times* called 'quaint accented natives' rose from 'their boats and berry patches' to protest Maine's new school finance law, which was designed to end inequality among the state's schools. The protesters were not violent. They merely withheld, for a time, their school tax payments and murmured to the press that the new law's repeal would be their bicentennial project.

Though the disgruntled downeasters do not make as much noise as the hosts of Louise Day Hicks, they have much in common with Boston's demonstrators. They take their stand just as firmly against government efforts to persuade communities that educational responsibility is wider than the borders of a town or district and that unless this wider responsibility is accepted, it will not be

possible for those school-age children who are not members of a privileged community to have access to educational opportunities equal to the best. Of these implications the people in boats and berry patches are undoubtedly unaware. As State Senator Bennett Katz, author of Maine's school finance law, points out, they were just reacting against bureaucracy; they were telling government to get off their backs.

### *good reason to interfere*

There were good reasons for government to interfere with Maine's schools. Before the legislature acted, a considerable discrepancy existed between the amount of money spent on pupils in the state's prosperous communities and on those in poor ones. A survey made in 1973 showed a per-pupil expenditure of \$990, on the average, in the top twenty percent of the school districts compared with \$440 per pupil in the state's least wealthy towns — more than twice as much for the privileged child. In 1973, Maine children from some poor school districts were being denied not just good schooling, but adequate schooling. It was not unusual for young people to graduate from high school without being able, in any normal sense of the words, to read and write. One high school English teacher admitted that about a third of her senior class was required to do little else than sit in the back of the room and keep quiet. When asked how they had been promoted to the senior class, she replied that they advanced, and would be graduated, according to something called 'social promotion.' "We believe they are better off here in school than out on the streets," she said.

Besides revealing the weakness of some schools, the 1973 survey also indicated that the towns which raised the fewest educational dollars were often paying the highest school taxes. Among the wealthiest towns, the tax rate for school purposes averaged only \$7 per thousand of property evaluation as against \$56 per thousand, eight times as much, for towns in the lowest economic level. Every acre of land, of course, is not worth the same as every other acre.

Along the coast of Maine, where summer residents compete for waterfront real estate, property values are high. In the Boothbay-Boothbay Harbor district, for example, the per-pupil property evaluation is \$107,847, whereas in Van Buren, an upstate district, the figure is \$9,919. This means that, without state help, Van Buren would need a tax rate of \$90 to raise \$900 for every student (the state average); in Boothbay, the tax rate to yield the same amount would be \$9.

Maine's new school finance act, generally known as LD 1994, is a direct attack on these financial inequities. As Asa Gordon, Deputy Commissioner of Education, explains it, every town will by 1977 have a sum of money to spend on each pupil equal to the state average for the previous year. In addition, the state provides, under the new law, transportation costs, special education costs (for handicapped, or, as they are now called, exceptional children), and the cost of bonds for debts on school buildings. By putting all educational expenses into a single budget, the bill makes it difficult for legislators to press for special favors for their home districts.

Because of its sweeping reforms, LD 1994 has become controversial. It is already under attack, not only from the coastal towns which have found their school taxes suddenly raised, but from the Governor of Maine as well, who, faced with budget deficits in all departments, is urging repeal of the bill.

### *education deficit*

The new legislation has certainly been more expensive than was anticipated. Giving Maine's ailing school system a badly needed injection of dollars has produced cost overruns amounting to \$6,000,000 so far this year, and the year's total may go as high as \$9,000,000. Governor Longley, in advocating repeal of the bill, hopes to end what he calls "this huge education deficit."

There has been an education deficit in Maine for some years; bringing education into balance has now produced a financial deficit. In part this last is due to a reduction in the proportion of

school expenses borne by local property taxes. In 1972 each town raised two-thirds of its school budget; now the state pays half the school bill, the average town's share of educational costs has been reduced, and there has been a corresponding relaxation of pressure for higher property taxes. "Education must not force people off their property," says Senator Katz. His bill has reduced property taxes in some towns by as much as 15%. Maine's elderly, many of them living on fixed incomes in old, but recently revalued family houses, breathe sighs of relief.

### *LD 1994 — a godsend*

LD 1994 has not only reduced property taxes, it has equalized them. Under the bill, every property owner, no matter what town he lives in, pays the same tax rate for school purposes as everyone else. As a result, towns with expensive real estate pay in more than they get back in school costs. Last year, the Boothbay Harbor school tax exceeded their school needs by \$342,542; in Mt. Desert the extra payment was \$181,342, and for other towns with highly valued property and small winter populations the sums were in proportion. These figures explain why some coastal towns were the first and loudest to protest the new legislation.

And yet, of the state's 497 municipalities, only seventy-one pay in more school taxes than they get back in subsidy, and only twenty-seven of these are coastal towns. For many of Maine's communities, LD 1994 has been a godsend. It has enabled country schools to afford big-city programs: foreign language courses, woodworking, counseling and guidance. The bill has provided bussing for additional students, an important factor in discouraging dropouts, and it has funded programs for exceptional (handicapped) children: every district must now identify by means of tests all disabled children, from the hard of hearing to the mentally retarded, and provide them with special education ranging all the way from a few hours of tutoring to full tuition at a private institution for the handicapped.

These programs are expensive; they, together with higher costs due to inflation (the increased price of fuel, for example, has resulted in heating bills far larger than had been budgeted), have produced the cost overruns which horrify the Governor. As a consequence, LD 1994 seems certain to be amended in the next session of the legislature, though Senator Katz does not think it will be scrapped. "You can drag your feet on these programs for a time," he says, implying that in the long run the state cannot allow the issue of local control to deprive some children of adequate schooling any more than the courts can allow the same issue to block integration.

The purpose of LD 1994 is, of course, to bring about equality of education by legislating equality of spending. Does equal cash mean equal quality? Does equal quality mean equal excellence or general mediocrity? In 1830, the *National Gazette* of Philadelphia wrote: "We have no confidence in any compulsory equalizations. It has been well observed that they pull down what is above but never raise what is below." Commissioner Gordon, recognizing this dilemma, says that the real question with LD 1994 is not its financial difficulties — free education is, after all, expensive, and good free education is very expensive: that is a fact of life. The important question with this or with any similar legislation is whether it encourages quality in the schools.

LD 1994 does not require any town to cut back a good program in order to conform to the new regulations. Though the ceiling for state aid is set at the statewide average per-pupil cost of the previous year, towns that formerly spent more than the state average on their school programs are allowed to spend that full sum if they raise the money themselves. And to encourage new programs, any town may spend an extra \$125 per pupil in any year, this money also to come from local taxes. Whether these provisions will in fact produce better and not just more expensive education, no one can tell. "Quality is a local option," says Commissioner Gordon.

Is it? Can a rural school, or a school in the slum district of a city, or a school in an all-black neighborhood, even if it has as much

money to spend, offer the same advantages as a school in a privileged suburb? What is a class like if a third of the students are required to do no more than keep quiet? For a community rich in people and money, quality may be an option; for a community poor in these resources, it is not. Young people's minds and lives are formed not only by the direct education they receive, but by the no less forceful influences they absorb from the community in which they live. That the exceptional person — exceptional in the best sense — may break through the walls a little town erects does not contradict the fact that even in this era of airplanes and television many young people are locked in to mediocrity, to small-town mentality.

In these barriers LD 1994, like other efforts to legislate equality of education in the broadest sense, seems to make only the smallest crack. Nevertheless, the local debate now beginning on Maine's school finance law does touch on questions which are interesting and important beyond the borders of the state: that every child should have free access to a first class education; that schools segregated by race or poverty are not the equal of schools in privileged localities; that (what taxpayers in Maine and elsewhere may need first to learn) cash may not make quality, but excellence is prefixed with a dollar sign.

*MARCH 1963; THE MONTH AFTER  
THE DEATH OF ROBERT FROST*

The swaying darkness of the branches  
of the trees against the snow:  
his lines of poetry against the light.

JOHN TAGLIABUE



SANDRA ISHAM

*BY MY SCHOOL OFFICE WINDOW,  
AFTER THE RAIN,  
VERY BRIGHT AND COOL AND MUCH GREEN,  
JUNE AND JULY AND AUGUST*

You done put on  
those large big dresses    trees  
I remember you when you were little girls

when you were little seeds    little songs  
what  
more than 15 years ago

and now so many

school days since  
Plato was taught  
Chuang-tzu was sought  
e.e. cummings was easy to come by

so many moonshines after your apparent    appearance    and

*A MIDSUMMER NIGHT'S DREAM*

you are larger                    like my wife and two daughters

or Nymphs

Nymphs    Nymphs    Nymphs    Nymphs    Nymphs    Nymphs

JOHN TAGLIABUE

# The Buckley Amendment

*An Intrusive Step Sideways*

KATHARINE L. AUCHINCLOSS

**T**he Family Educational Rights and Privacy Act, better known as The Buckley Amendment (or the Buckley-Pell Amendment), was federally enacted in November, 1974. It applies only to those institutions receiving federal monies, that is to the public schools and to most institutions of post-secondary education. As a practical matter, however, the law also affects independent secondary schools.

The purpose of the Amendment is to give parents (and children as they reach the age of majority) access to the records kept about a child by the school system and to deny such access to third parties without the knowledge of the family. The law requires that the parent or student must receive annual notification of these rights. In addition, specific provisions allow parents to challenge the content of the record if it is felt to be inaccurate or misleading. If, after a hearing, the contested material is not removed, parents have the right to insert their own material. Finally, conditions for release of the record to third parties are stipulated. The record must contain indications of such release, and the parents must be informed. The matter of letters of recommendation, which caused considerable

concern in secondary schools and in higher education institutions, was clarified by an amendment introduced by Senator Claiborne Pell which allows the student to waive the right to see such letters and which maintains the confidentiality of those letters already on file at the time the law was passed. Institutions are prohibited from requiring a waiver of rights as a prerequisite to services they would ordinarily render.

The genesis of the Buckley Amendment reflects a ground swell of concern about individual privacy which was surfacing in our society. We were becoming increasingly aware of the number of computerized records kept on all of us by both governmental and private agencies. We knew that our own and our children's educational records were among the recorded aspects of our lives which were available to third party inspection without our knowledge or control. To make it worse, we ourselves were not sure what was in those records.

This was the climate of opinion in the spring of 1973, when plans were being developed for the National Committee for Citizens in Education. NCCE was to succeed the National Committee for the Support of the Public Schools, which had been formed by the late Agnes Meyer to develop greater financial support of public schools by the federal government. One of NCSPS's greatest successes was the passage of the Elementary and Secondary Education Act of 1965. The new National Committee had the aim of developing an increased citizen voice in a broad array of decision making for the public schools. To arouse interest and develop a constituency of concerned citizens, NCCE needed an issue which would capture attention and which would cut across political and ideological lines. The privacy issue seemed to fit these requirements, but staff members who chose that issue could not know in the beginning how dynamic it would become!

Some valuable work had already been done on privacy of student records by the Russell Sage Foundation, which had undertaken a study of the problem as early as 1968. In 1969 the Foundation sponsored a conference and issued a set of guidelines for school systems. Using these and other materials, the professional staff

at NCCE set out to study and compile the state regulations relative to public records. In spite of the broad teaching and administrative experience of these men and their first-hand knowledge of existing abuses, they were startled at their findings. The problem was worse than they had anticipated. They focused on particular regulations and policies dealing with parental access to records and on the protection of such records from third party inspection. Their research revealed that students and parents were "shockingly" vulnerable. The National Committee intended to give the issue visibility and to provide parents across the country with the facts about policies and regulations in their states. To this end NCCE published *Children, Parents and School Records* in May 1974. The book outlined strategies for parent action in this area and provided state by state information. Before it even appeared, however, an article in *Parade* magazine in March 1974 about the work of NCCE on the privacy issue had caught the attention of Senator James L. Buckley's staff. The Senator leaned heavily on information provided by NCCE in drafting his legislation. In its final version the law was broadened to include post-secondary education, an extension which had not been originally envisioned and with which the National Committee never dealt at all.

Although the law was passed in November, 1974, and provisional guidelines were published over a year ago, the final guidelines have not yet been issued by the Department of Health, Education and Welfare. This delay has impeded monitoring of the law's implementation which had been planned by NCCE in cooperation with several groups and organizations. Even in the absence of information which that monitoring could have provided, it is clear that there has been considerable change. Virtually all of the states have already brought their regulations into conformity with the Buckley Amendment, and an increasing number of school districts have redefined their policies in this area. In some cases the process was already under way because of the same sense of concern about school records which prompted NCCE to study the issue.

There is general consensus that the children most damaged by record keeping abuses have been those requiring "special educa-

tion.” In this area there is a particular danger of “labeling” children by comments inserted in the record by teachers, psychologists, and others who work with that child. Some of these comments are based on subjective perceptions of those children, and some even go so far as to suggest diagnoses or prescriptions which the writer is not qualified to give. Yet these comments remain a part of the child’s file and are not expunged from year to year. Now parents will be able to see the records and to review and, if necessary, challenge the accuracy of the statements.

But all children have been affected by record-keeping practices, some of which are conceded by educators themselves to be both harmful and educationally useless. Those to whom I spoke agree that certain records are kept for too long a time. They believe that every file should be carefully examined at stated periods and that materials which are no longer applicable should be removed. For example, it may be useful for a third grade teacher to know that a child sucked his or her thumb in first grade; it is of no possible concern to the high school teacher and may even color that teacher’s opinion of the student. Moreover, opening the files to parents has positive effects. It is surely salutary for teachers and administrators to share all test results with the parents even if they must take the time to explain these results in a way which those parents can understand. As one who always resented the guarded information I received about my children’s test results, I regard such openness as a step forward. Ten years ago parents in my community were never told the results of I.Q. tests since such information would color their view of their child’s potential. No one seemed to have much concern about the damage that could result if a teacher’s view of that potential were influenced by those tests!

I have indicated some of the positive changes which can result from the Buckley Amendment. However, has it actually given parents as much access to the schools and required those schools to be as responsive as the National Committee hoped when it began to study the issue? The answer appears to be “yes and no.” Initially a number of parents were encouraged by the law to exercise their rights for access to the information. Also many schools have made

additional information about the records available to parents on their own initiative. But some school systems, in the absence of HEW regulations, continue to delay in conforming to the law. These probably are precisely the systems most in need of reform in terms of response to parents. Moreover, parents have not kept up their pressure or concern about the subject and continue to be somewhat timid about approaching the "educational professionals."

On this point I received information from one school administrator which surprised me. He indicated that parents have more contact with elementary schools than with secondary schools, which did not startle me; I had experienced it myself. What did surprise me was that he used the word "timid" in describing most parents' approach to the junior or senior high school. This timidity is probably a result of the larger, more impersonal size of the schools and of the staff, and it may also be a result, at least in some cases, of the students' apprehension about parental involvement. Whatever the reasons, the phenomenon indicates something about our public secondary schools which should cause us deep concern. Clearly they are not institutions where the principals, administrators, teachers, students, and the parents give clear signs that they are working together to create an educational climate and process which works for each student.

Independent schools have not had to be as much concerned with their practices of record keeping. Since they do not receive federal funds, they are not subject to those provisions of the act. Moreover, most have always shared information with parents. In their placement efforts, however, the Buckley Amendment has had more of an effect. Unless the student signs a waiver, the letters of recommendations about him or her may be seen by that student at a later time. Apparently not all students are willing to sign the waiver. In this area the law has undoubtedly "cut down on candor" as one headmistress of an independent school aptly put it. In fact the Amendment has been called by some the "A T & T Amendment," since telephone recommendations, which can be totally candid, have replaced the written document in many cases.

Has the effect of the Buckley Amendment been salutary? Prac-

tices in record keeping have been changed for the better. Many of those school administrators who were opposed to the law originally, or who lamented the amount of work and money necessary to implement it, admit freely that they did not know themselves how damaging some of the records were. In some school systems shredding machines were used to purge student records before the effective date for implementation of the Act. In addition, thousands of children, some with the help of NCCE, have since had their records expunged of damaging and inaccurate information. Parents *have* been given an added mechanism (if they will use it) for requiring responsiveness from their public school systems. On the negative side are added procedural requirements and costs for already burdened institutions and the further intrusion of federal law, to which H. Thomas James referred in the last issue of this magazine, into the affairs of schools.

This intrusion is a matter of concern for us all. J. William Rioux, a senior associate at NCCE, has written:

It is vital that institutions, such as legislatures and courts established to operate in our behalf, at critical times, actually perform that function. It is also sobering to realize that the declining involvement of parents and citizens in public school policies and decisions, "leaving it to the professionals," has led to the necessity for Congress to define student and parent rights to privacy. . . .

The problems now troubling us might never have grown to that dimension if each of us had been involved in asking reasonable questions, making suggestions, and insisting on a place of influence in developments affecting children. . . . The issues involved are too important for anyone to assume that all will go well without responsible citizen supervision.

If we are to stop the growing tide of legislation and of increasing litigation in the field of education, we shall have to recognize and deal with the problems before we are coerced. This will take cooperation and responsible action on the part of everyone concerned with schools.

# Lock-Step Learning

## *Legally Imposed Inefficiency*

CHARLES S. BENSON

JAMES W. GUTHRIE

BRENDA M. ARCHIBALD

Social scientists agree little about how people learn. Basic questions remain about matters such as the manner in which neural processes function in learning, the significance of reinforcement, and the appropriate structure and sequence of the content to be mastered. However, there exists one dimension of learning about which there is substantial agreement, the fact that individuals learn at vastly different rates. Yet, despite the seemingly obvious nature of the observation that no two people comprehend in the same way at the same time, the statutes and regulations regarding American schooling, with few exceptions, specify that the measure of an adequately educated student is the number of hours, days, months, and years he or she has spent in school.

Our thesis is that this time-based model of learning is inappropriate and comprises the single largest inefficiency associated with schooling, the waste of students' and instructors' time. This test of time strategy currently costs millions of dollars that could be more productively used to expand the educational opportunities of rapidly learning students and to provide added assistance to their colleagues who, for whatever reason, comprehend more slowly.

*the test of time model*

In all but one of the fifty states, a child's attendance at school is compelled by law. The historical justification for such compulsion is that democratic government depends for its survival upon an informed citizenry. The almost universal legal measure of a student's comprehension of any particular portion of the school curriculum is the amount of time spent in classes devoted to the subject. In order to progress to the next level of schooling or life, a state-specified number of instructional hours, days, months, and years must be accrued. Indeed, in order to assure itself that every student has accomplished the minimum learning necessary for playing his role in society, states specify a minimum school-leaving age, usually sixteen. Almost nowhere does society assure itself of minimal school competence or subject comprehension in terms of any measure but time. It is assumed simply that a student exposed to the specified days of history, English, sex education, driver training, physical education, and mathematics has, indeed, learned at least that minimum thought necessary by society to function satisfactorily. This is what we label the time-based model of learning.

The time-based model appears to be invalid and wasteful in at least three ways. First, if the subject matter is thought sufficiently important by policy-makers to be mandated as a part of the school curriculum, then there should be some guarantee that all students, unless handicapped or otherwise incapable of learning, indeed know the minimal amount necessary to satisfy society and benefit themselves. Sitting through a year of U. S. history or civics does not guarantee that a student knows the mechanics of registering to vote, can protect himself or herself from political propaganda, understands his or her constitutional rights. Similarly, exposure to instruction does not in itself assure society that students know the dangers inherent in alcohol or drug abuse or are sufficiently acquainted with the details of venereal disease to protect themselves. A criterion-referenced test would appear to be a much more useful strategy to assure society's purposes.

Second, as we stated in our opening paragraph, no two human beings learn all subjects at the same rate. Yet, under the present

time-based model, bright youngsters must punch the time clock for the same number of hours as their intellectually less-gifted peers. If subject matter competence were specified in terms of measurable objectives, then the time of quick students could be more productively employed. Similarly, the time of their teachers could be put to better use.

Finally, in a normal curve distribution of learning, it is quite conceivable that a significant portion of our schools' enrollment cannot learn all that is expected of them in the time provided. There inevitably comes the end of the grading period, semester, or school year, and slow students are short of the knowledge the legislature intended they possess. Neither the student nor society should suffer lack of comprehension for want of a few more days or months of instruction. If the learning expectations of state and local policymakers were expressed as measures of outcome instead of input, time of instruction, then less-gifted students would stand a better chance of learning what they need to know. Both they and society would benefit.

### *an historical perspective*

The overall regulation by government of educational outputs in this country can be said to date from 1647, when the General Court of Massachusetts decreed that each Town with 50 families should provide a schoolmaster to teach all children who 'shall resort to him, to write and read.' Note that the objective was stated in acquired skills — in this specific case, the skills of literacy. By 1852, however, educational objectives had been translated into attendance for a specified period of time, for it was in that year the Commonwealth of Massachusetts passed the first compulsory attendance law to be found in the United States. By 1918, forty-eight states, together with the District of Columbia, had compulsory attendance laws in force. Twenty states required attendance from ages seven to sixteen, and ten others demanded that children attend school from ages eight to sixteen. At the other extreme, five states — Georgia, Louisiana, North Carolina, South Carolina, and Texas — required attendance only to what was then the national

minimum age of fourteen. Connecticut specified that a year of schooling equalled thirty-eight weeks. Eight states defined a year of schooling as nine months, while eighteen others stated it to be eight months.

Thus, a practically universal pattern of compulsory attendance had become set by the end of World War I. Moreover, elaborate provisions requiring teachers and administrators to report truancy, as well as legal penalties for failure so to report, were established, and the powers and duties of truant officers were clearly laid down. "The test of efficiency of any compulsory education system may be fairly shown by the answers to two questions, which are: First, what percent of the total school population does it get into school, or otherwise reach? Secondly, how well does it keep them in school, or in training elsewhere? Generally speaking, the law which scores satisfactory in this test is a satisfactory law."<sup>1</sup>

Shortly following upon the approximate standardization of compulsory attendance was the establishment of a similarly mechanical procedure for determining when a person could be judged to have completed high school. High school graduation was determined by the accumulation of a specified number of credits. "Amount of credit is most commonly referred to in terms of the unit. The unit is variously defined in different sections, but in general it represents approximately one fourth of a year's work as performed by a student of average ability."<sup>2</sup> Another common accounting measure was semester credit, with two semester credits equal to one unit. By 1928, it could be said that all states except Massachusetts expressed graduation requirements in terms of semester credits or in units; states demanded completion of from twenty-nine to thirty-six semester credits for the diploma.

We do not contend that compulsory attendance laws failed altogether to promote learning of recalcitrant students nor that they did not serve to put pressure on low-income parents to allow their

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<sup>1</sup>As quoted in Bureau of Education, Department of the Interior, *Laws Relating to Compulsory Education*, Bulletin 1928, No. 20, (Washington: U.S. Government Printing Office, 1929), p. 29.

<sup>2</sup>Bureau of Education, Department of the Interior, *Requirements for High School Graduation*, Bulletin 1928, No. 21 (Washington: U.S. Government Printing Office, 1929), pp. 2-5.

children to attend school beyond the ages at which they acquired capacity to work (at least within the household). Nor do we contend that the requirement to take — and pass — a specified number of courses fails altogether to establish minimum standards of student performance in high school. Our concern is that this policy gave virtually no attention to the problem of maximizing the uses of the time of all students, the fast and the typical as well as the slow.

### *basis for change*

Although our lock-step system of instruction was rather fully in place by the end of the 1920's, a number of school systems right from the time of its being set in place sought to soften its terms and open up means by which its deleterious effects could be moderated. This latter phenomenon alone means that a lock-step structure is not a necessary condition of instruction. Some experiments with flexibility that were conducted in the 1920's stressed early completion. They did not raise the question, apparently, of whether some students might like to accelerate basic work in order to have time to do advanced work in certain subjects of special interest (the English pattern, essentially), rather than simply to get out of high school more quickly.

State statutes provide mixed signals in regard to the prospect for changing the time-based model to a performance-based measurement of learning. On one hand, almost all state provisions for the accreditation of schools do not take pupil performance into account. Rather, where states specify accreditation standards at all, they do so in terms of inputs, pupil-teacher ratios, library adequacy, program offerings, and facilities.

On the brighter side, an increasing number of states are moving to statewide testing programs. Nowhere presently are the results from such tests systematically used as measures of productivity. However, they could eventually serve as a base for judging student performance by a metric other than time. As of 1973, thirty states were reported by the Educational Testing Service as having at least a rudimentary statewide testing program. These range from New York State's rather complete plan of Regents Examination at the

secondary level plus an elaborate system of criterion-referenced tests for grades three, six, and nine, to the beginning efforts in Arkansas, where students in six percent of the state's schools were sampled with a state test.

Statewide testing has been motivated in part by the "accountability" movement. In that it promises to provide policy-makers with a better indicator of what they are getting for the public dollar, such systematic testing is likely to expand and continue. However, there are those who contend that tests can displace the real goals of education and be emotionally damaging to students. Where the outcome of this disagreement will leave the measurement of learning is not now completely clear.

### *the costs of time-based instruction*

We have indicated that school legislation encourages timed uniformity in the progress of high school students toward their diplomas. No one knows what is the precise magnitude of the extra costs that such lock-step instruction imposes, but it is possible to make rough estimates.

#### *Case I: Schooling as a Discrete Annual Process*

Consider a middle-class suburban high school with a four-year program, operating under a 6-2-4 plan, and enrolling approximately 4,100 students. Let there be information available to show the time in months required by students to complete the standard high school curriculum if each was allowed to proceed at his or her own pace. (We assume that acceleration is not allowed to affect student achievement adversely.) Let the distribution of students over such a time schedule be as in Table I.

We assume no change in length or timing of the conventional school year; to say, then, that a student could complete the high school program in one year means that the student would be clocked from that time in early June when he or she was graduated from junior high through the time when he or she had completed the first full year of high school the following June. The student might use the summer for independent study and otherwise ac-

TABLE I  
Hypothetical Distribution of Four-Year Suburban High School Students  
By Time Required to Complete Standard Diploma Programs, in Months.

The distribution of students is determined  
by the formula for the binomial distribution:

$$p(x; n) = \binom{n}{x} p^x (1-p)^{n-x}$$

| (1)    | (2)                | (1)    | (2)                |
|--------|--------------------|--------|--------------------|
| MONTHS | NUMBER OF STUDENTS | MONTHS | NUMBER OF STUDENTS |
| 12     | 1                  | 40     | 792                |
| 16     | 12                 | 44     | 495                |
| 20     | 66                 | 48     | 220                |
| 24     | 220                | 52     | 66                 |
| 28     | 495                | 60     | 12                 |
| 32     | 792                |        | 1                  |
| 36     | 924                | Total: | 4,096              |

celerate his or her program by the devices described in the Little Rock program that existed in 1929-30. To say that one student out of 4,096 could complete a high school program in one calendar year is not unreasonable. Nor is it unreasonable to say that the model group of students could complete the high school program in three calendar years. Table I further suggests that the distribution of time required to complete high school is bell-shaped and symmetrical. In the absence of real information on this point, these assumptions about the time distribution seem to be the most responsible that one could suggest.

Suppose that students are given their diplomas whenever they finish their high school programs and that they are encouraged to accelerate their schooling by summer independent study, by taking extra courses in school, by taking correspondence work, etc. What would be the likely saving in costs to the public system (ignoring for the moment the value of student time itself)? In terms of Table I, 16,068 student years are consumed to graduate 4,017 students (98.1 percent of the class). If each student proceeded at his or her

own pace (one would obtain the diploma in twelve months elapsed time, twelve would obtain it in sixteen months, sixty-six in twenty months, and so on, to 220, finally, who would obtain the diploma in forty-eight months), the 4,017 students could be graduated in 11,941 student years of time.<sup>3</sup> This is a saving of 25.7 percent in student years. Dollar savings nationally would be in the order of \$762,500,000 per million suburban high school students.

Imagine now that all students earn diplomas, which is to say that the seventy-nine students who fail to complete the four-year program are encouraged to stay on until they do so. This could be accomplished in the suburban school at a cost of 12,288 student years, 23.5 percent fewer student years than is required under the lock-step system that leaves seventy-nine students with no diplomas.

Yet another procedure might be to establish an expected termination of high school eleven years after kindergarten — in the case at hand, creating a 6-2-3 system, while encouraging students who cannot complete their work in that period of time to continue for an extra year (or longer). The estimates of Table I show a reduction in student years in such a shift, i.e., to a 6-2-3 plan from a 6-2-4 plan, of 3,203 (16,068-12,865) if the seventy-nine students who cannot complete in four years of high school are cut off after four years. This is a percentage reduction in hours required of 19.9. If all students are allowed to complete under a basic 6-2-3 plan, the saving in student years is 2,856 or 17.8 percent.

### *Case II: Schooling as a Continuous Process*

So far, we have assumed that students who complete high school early require no extra formal schooling in order to do so. Now we alter that assumption. Table II portrays the hypothetical distribution of school completions of Table I, with the addition of possible increments of formal education (column 2), expressed in months, that might be needed for students to finish their high school pro-

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<sup>3</sup>The base figure, 16,068 years of student time, is obtained by multiplying 4,017 graduates by 4. By allowing each student to be graduated when ready, we arrive at a time cost of 11,941 years. This figure is computed by multiplying the number of months in each line of Table I (except the last three) by the number of students on that line, taking the sum — 143,292 months — and dividing by 12.

TABLE II  
Hypothetical Distribution of Four-Year Suburban High School Students  
By Time Required to Complete Standard Diploma Program  
In Calendar Months Adjusted to Recognize Need  
For More Continuous Learning Years

| CALENDAR<br>MONTHS | EXTRA MONTHS<br>OF SUPERVISED<br>INSTRUCTION |     | NUMBER OF<br>STUDENTS |
|--------------------|----------------------------------------------|-----|-----------------------|
|                    | (a)                                          | (b) |                       |
| 12                 | 3.0                                          | 3.0 | 1                     |
| 16                 | 2.5                                          | 3.0 | 12                    |
| 20                 | 2.0                                          | 2.5 | 66                    |
| 24                 | 1.5                                          | 2.5 | 220                   |
| 28                 | 1.0                                          | 2.0 | 495                   |
| 32                 | 0.5                                          | 2.0 | 792                   |
| 36                 | 0                                            | 1.5 | 924                   |
| 40                 | 0                                            | 1.5 | 792                   |
| 44                 | 0                                            | 1.0 | 495                   |
| 48                 | 0                                            | 0   | 220                   |
| 52                 | 0                                            | 0   | 66                    |
| 56                 | 0                                            | 0   | 12                    |
| 60                 | 0                                            | 0   | 1                     |
| Total:             |                                              |     | <u>4,096</u>          |

grams early. Column 2a postulates only a modest increase in formal education requirements, and Column 2b suggests that more substantial increments are needed.

What is the effect of regarding schooling as a more or less continuous process on possible savings to be achieved through early completion? As it turns out, very little. Expressing requirements in months of formal instruction (a computational change only) and taking account of extra requirements of education shown in Table II, Column 2a, savings in student time through early completion still are at the level of 24.7 percent compared to 25.7 percent in the example of Table I. The heavier requirements for extra instruction shown in Column 2b of Table II reduce the rate of savings

only to 21.3 percent. Savings appear to be relatively insensitive to increments in formal education of the kind shown in Table II.

### *overall consequences for educational costs*

Making reasonable assumptions about the distribution of time required for different students to complete suburban high school, we find savings in student time in the order of twenty percent plus. Were such savings in the time of high school students actually to be realized, they could eventually be translated into dollar savings in the educational budget: fewer students in school means that fewer teachers, books, facilities, etc., are needed. The distribution of time required to complete high school that we have postulated in Tables I and II, although quite probably reasonable for suburban students, does not look right for inner-city students; however, the offer of early completion might encourage inner-city youth who are otherwise inclined to drop out to stay and finish their work instead. Further, resources released under a policy of encouraging early completions might be employed to help low achievers in high school do better. It should also be possible to achieve savings by allowing students to move ahead at their own speed in earlier grades.

No one can put a precise estimate at this time on the dollar amount of savings to be realized through the establishment of a flexible policy of student promotions and graduations. Large-scale experiments could serve to establish a basis for making such estimates. In the meantime, we are forced to rely on *a priori* arguments. Considering the hypothetical estimates we have made just above, we suggest that, at a minimum, flexible promotions and graduations should allow a saving in educational expenditures of ten percent annually. In terms of public expenditures on elementary and secondary education in 1972-73, the dollar value of savings would be \$5.2 billion a year.<sup>4</sup>

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<sup>4</sup>Based upon an estimate of current expenditures per student of \$1,026 in 1972-73. See Betty J. Foster, *Statistics of Public Elementary and Secondary Day Schools, Fall 1972* (Washington: National Center for Educational Statistics, Office of Education, 1973), p. 6.

*improvements in quality of education*

We mentioned earlier that the drive for greater efficiency in education need not have the single objective of reduction in the level of school expenditures. Resources saved by more efficient use of student time might be used to raise standards of quality of education.

Students who accelerated their standard program might wish to use the time they had so acquired to study topics of special interest in greater depth. These topics might be in academic or in vocational fields. Here, however, we run into another kind of efficiency problem, the problem of size of school district. Most school districts in the United States are too small to offer a highly diversified set of courses under conditions of reasonable economies of scale. One solution to this problem is to rely upon regional or area-wide educational authorities to supply the more esoteric type of instruction, using in many cases the physical facilities of the local school district. Speaking of New York's Boards of Cooperative Education Services, the New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education (Fleischmann) proposed that: ". . . the BOCES could offer a number of services funded directly by the state. Among these would be innovative or specialized courses of such limited appeal that they could not be offered in any of the separate school districts participating. Each BOCES superintendent might prepare an annual 'spring catalogue' of such courses similar to college course catalogues. Provided adequate enrollments were attained, such courses should be financed through an annual state appropriation made available to the various BOCES in proportion to their enrollments in the programs." Cooperative arrangements for staffing of courses arranged among high schools, universities, and colleges could be exploited more informally to overcome the economies of scale problem as well.

In addition, we should expect a number of students to avail themselves of the opportunity to leave high school early. Some few students might wish to continue their education under existing conventional arrangements, but in the majority of cases, special atten-

tion would be called for. Some students might seek immediate employment, and it would be well if the government adopted a "youth employment policy" to see that work was available for young persons of ages sixteen to seventeen. Others might wish to take a vocational program at a community college, and it would be appropriate to see that such programs were open to high school graduates of younger ages. Others might wish to receive training in proprietary schools. The Fleischmann Commission recommended that eleventh and twelfth grade students receive vouchers equal in dollar value per year to the annual cost of attending public school in order to help them meet the costs of such private education. The recommendation would appear to be just as appropriate for persons who have completed high school early as for those who wish to count vocational instruction for their high school diploma.

Lastly, it is appropriate to explore the usefulness of the "early college" idea. Simon's Rock is an example, "an 'early' college that enrolls students aged 16 to 20 and attempts to make an intellectually coherent whole out of that four-year period which in the United States has always been divided between high school and college. . . . These are the middle years, before (for some students) vocational or professional training, for finding out . . . what one is interested in and able to do. . . . The Simon's Rock catalogue (thus) offers a broad array of . . . courses . . . English, theater, art, music, dance . . . history, psychology, anthropology, French, Spanish, Russian . . . physics, chemistry . . . mathematics."<sup>5</sup> Simon's Rock is an expensive institution to run, costing about \$5,000 a student per year, but that is partly because it is residential. Non-residential programs could be established, we would estimate, at approximately \$2,000 per student per year. For students who are academically inclined and who are not ready emotionally to enter university at sixteen or seventeen, the early college appears to offer a suitable transition to advanced studies.

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<sup>5</sup>*The Fleischmann Report*, Vol. II (New York: The Viking Press, 1973), pp. 88-90.

*conclusion*

Taking thought about the effective use of student time leads naturally to proposals that students be encouraged to complete their basic, required work early if they are able to do so, because preferred uses of student time can easily be seen to exist. It is a matter of substituting hours of preferred activity for hours less efficiently used subject to the constraint that the requirements of the standard curriculum are met. State laws impede that process of rational substitution.

By relying on a time-based model of learning, policy-makers are investing valuable resources counter-productively. Student and instructor time is being allocated in a most wasteful fashion. By insisting that our brightest students partake of activities beneath their ability, we undoubtedly are contributing to their feelings of alienation. Further, the present model fails to accomplish one of the major purposes for which it was designed, to ensure the state that minimum level of competency necessary for societal survival is being achieved. The total dollar waste from such practices probably exceeds \$5 billion annually, and this says nothing about the costs of alienation and lost student time.

We doubt seriously that the custodial function of schools will be curtailed, at least in the short run. Therefore, we have not argued particularly that students be permitted altogether to leave the care of schools prior to the present age limits of compulsory education. Rather, our concern, assuming the custodial function, is that student time in schools be spent with optimum productivity and satisfaction. Altering the measure of school success so as to take into account standards of performance would permit students who accomplish state purposes quickly to put their time to better use. The costs of providing such students with special services could be borne by the savings obtained from their early completion of required subjects. The outcome, we believe, would be happier, better informed students, more satisfied teachers relieved of much of their present babysitting, and a society populated by better educated citizens.

OCTOBER THOUGHTS ON  
A CAMPUS WALK

The good grain spreads from the scar,  
the buckeye gleams in the burr,  
my thumb remembers.

In a time of outrage  
this chestnut is irrelevant

as Chaucer's hazelwoods  
as the willow wherein  
I read the *Nibelungenlied*

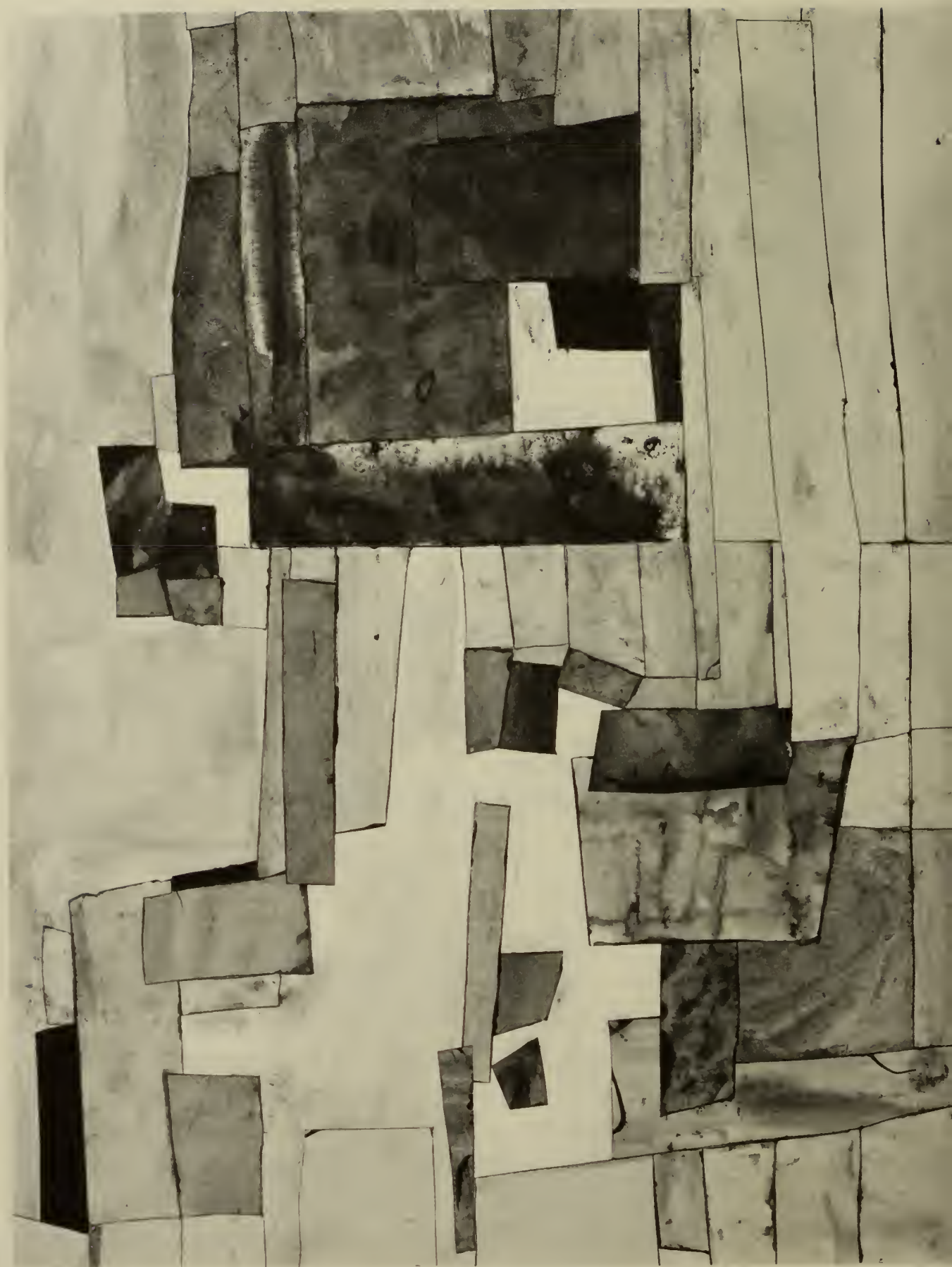
as knowing thirty kinds of trees  
that do not know me.

I should be more disruptive

but what do I represent,  
who am grammatical even under stress —

I transmit  
a deciduous heritage.

BARBARA D. HOLENDER



JENNIFER BENSLEY

# Book Reviews

## *Behaviorism Clarified, The Freedom Train Derailed*

*About Behaviorism*, by B. F. Skinner (New York:  
Alfred A. Knopf, 1974)

Reviewed by OWEN J. FLANAGAN, JR.

You think you've chosen the rewards, you haven't; the rewards  
have chosen you. — Archibald MacLeish

HUMANISM, no doubt, will never be the same — post-Skinnerian humanism that is. Humanism now paradoxically involves a disavowal of our pre-scientific beliefs in free will, creativity, the inscrutability of the human mind, and the immorality of coercion. The ultimate paradox, according to B. F. Skinner, is that the rejection of the latter web of beliefs — which has constituted the core of both our intuitive and academic philosophy of man since Plato's time — is a necessary condition for the advent of that new day which the humanists of the Enlightenment so vociferously sought. And that, of course, is the day on which men are free, responsible, dignified, creative, rational, and, most important of all, happy. It is the day on which the Leibnizians can remove their tongues from their cheeks and honestly call this "the best of all possible worlds."

It is no wonder that the thought of B. F. Skinner remains enigmatic. Skinner's work is far more often discussed than read, but it is the almost contradictory character of his message, highlighted above, which has caused such reluctance in accepting his humanism.

*About Behaviorism*, perhaps Skinner's last substantive work, is an attempt at clarification from America's greatest living psychologist. The appearance of the book, and its title, suggest that it is time to reflect on his theory and its implications. Therefore, instead of writing specifically about *About Behaviorism*, it is certainly as pertinent in this journal to review Skinner's behaviorism in general, and to cite a few of the more important implications of behaviorism for educators.

Such focus makes sense for a number of reasons. First, Skinner's science of human behavior is a psychology of learning, pure and simple. And, of course, questions of how and how best humans learn are central educationally. Second, Skinner's own conception of knowledge is radically Baconian. His "knowledge is power" streak makes itself felt in his persistent attempt to turn his psychology into a tool to control and engineer human behavior for the sake of human advancement.<sup>1</sup> His persistence in this respect has already resulted in educational applications of the theory, most notably, in the form of programmed instruction and teaching machines. Finally, all the paradoxes contained in Skinner's revolutionary philosophy of man can be clearly teased out and resolved by focusing on the educational microcosm; and his true humanism can be captured in the process.

The science of human behavior, for Skinner, "is an attempt to discover order, to show that certain events stand in lawful relations to other events."<sup>2</sup> In fact, Skinner has experimentally established numerous laws of learning which apply generally to humans.<sup>3</sup> Herein lies the basis of his revolutionary philosophy of man which makes the concept of free will and its suite anachronistic while, paradoxically, it simultaneously makes the traditional goals of humanism achievable.

If an organism's behavior is free and spontaneous, then a lawful

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<sup>1</sup>*Walden Two* (1948), *The Technology of Teaching* (1968), and *Beyond Freedom and Dignity* (1971) all stress the potential value of the so-called behavioral engineering.

<sup>2</sup>*Science and Human Behavior* (The Free Press, New York, 1953), p. 6.

<sup>3</sup>See *Behavior of Organisms* (1938) and *Schedules of Reinforcement* (with C. Ferster, 1957) in particular.

scientific account of the organism's behavior is impossible. However, that a complete, lawful account of human behavior is partially written severely attenuates the plausibility of our traditional conception of man as a free agent. The emergent science of human behavior destroys the mystery of human action; it is, perhaps, the last of a series of blows to our hubris delivered in turn by Copernicus, Darwin, and Freud. Furthermore, the thesis that human behavior is lawful, that is controlled at all times whether we are aware of the causal influences or not, requires that we revise our view on the immorality of coercion; control cannot be immoral if our behavior is invariably controlled. The moral issue shifts then from its traditional focus on the preservation of autonomy, which is *ex hypothesi* impossible, to a focus on the appropriateness and effectiveness of the method of control in achieving desirable ends.

*man — a free agent*

It is at this point that the paradoxes resolve themselves for the Skinnerian, and turn instead on the traditionalist; it is he who is guilty of an inconsistency between theory and practice. The charge, of course, is that traditional educational and social reform practices have in deed shown a commitment to the shaping, molding, and sculpting of better human beings while in theory they have denied the possibility of effective sculpting procedures since they view man as a free, spontaneous agent who is not only able, but quite willing to resist being molded!

For Skinner it is the derailment of the freedom train which makes sense of, and allows, the success of the entire humanistic enterprise of molding and educating a better man. By paying full attention to, and deliberately employing, the behavioral technology already at our disposal, we stand a chance of molding more knowledgeable, rational, creative, and moral people. The choice is not between leaving man free or unfree, but between leaving the control of man's behavior to the helter-skelter processes in his current environment, or of deliberating desired ends, and efficiently shaping that

environment to achieve those ends. Educationally, it is important that we pay full attention to the theory, for it can be made to sound deceptively simple, and thus its implementation can also be simplistic.

For Skinner most complex and interesting “learning occurs when behavior is reinforced.”<sup>4</sup> The crucial relationship is between an instance of behavior and its consequences. To be capitalistic about it: “The ‘reasons’ why men behave are to be found among the consequences of their behavior — what, to put it roughly, they ‘get out of behaving in given ways.’”<sup>5</sup>

In the birch rod days one learned primarily in order to avoid the consequence of not learning, namely, of getting the rod. To be sure, rods are gone, but subtle methods of aversely controlling educational behavior still remain — they range from the possibility of failure to teacher, parental or peer disapproval and ridicule. We now know from the experimental analysis of behavior that punitive methods, subtle or not, have disastrous side effects, namely: boredom, truancy, delinquency, and anti-intellectualism.

The required strategy, according to Skinner, is to make positive reinforcers contingent on learning. Unfortunately, it is not merely a question of replacing the rod with gum drops. According to Skinner educators still face two significant challenges. First, a piece of behavior is most effectively acquired if the reinforcing consequence follows the behavior immediately. This has obvious implications for those of us who invariably give tests back long after they are taken, but it weighs heavily and directly on the entire educational enterprise. After all education “is the establishing of behavior which will be of advantage to the individual and others at some future time.”<sup>6</sup> The problem, of course, is how we can best sustain learning when the real reinforcers lie in the distant future.

John Dewey tried to solve this problem by bringing immediate natural reinforcers into the classroom or by bringing students to the natural reinforcers, for example to the woods to do science.

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<sup>4</sup>“Reflections of a Decade of Teaching Machines” in *Cumulative Record*, Appleton-Century-Crofts, (Third edition, 1972), p. 195.

<sup>5</sup>“Contingency Management in the Classroom” *Cumulative Record*, p. 227.

<sup>6</sup>*Science and Human Behavior*, p. 402.

Learning-by-doing certainly makes good educational sense from a behavioral point of view, since it provides immediate reinforcement, but it has difficulty sustaining a total educational strategy. It is well-nigh impossible to bring the real reinforcers, for studying the differential calculus, genetics, history, or, for that matter, basic language skills, to bear in the classroom.

So for the most part we end up trying to sustain our students with a mixture of promises of ultimate reinforcement, aversive control, and artificial positive reinforcers in the form of grades, signs of approval, diplomas, and awards. The solution to this problem, we shall see, lies in the more efficient use of the reinforcers at our disposal.

### *positive reinforcement*

The second major challenge facing the educator from a behavioristic point of view is even more evasive. It has to do with the experimentally established fact that positive reinforcement dramatically strengthens the behavior it follows but is absolutely neutral with respect to the desirability of that behavior. This requires that we concentrate as much, if not more, on the desirability of the behavior we are reinforcing as on the process of consistent and regular reinforcement itself. This point deserves clarification.

We typically give a good grade as a reinforcer for the behavior of a good test performance. If the good test performance happened to be preceded by good, long-term preparation, then we fortuitously reinforce that behavior too. If, however, it was preceded by cramming, then that undersirable behavior gets strengthened. Furthermore the common practice of giving grades solely on the basis of test performance can easily result in the punishment or extinction of very desirable behaviors. It is well known that consistent, conscientious preparation does not necessarily result in good test performance. Since poor test performance is punished, consistent, conscientious effort and preparation fail to be rewarded, and the likelihood of the student working hard in the future

decreases. The implications of the theory for educators are clear. We must pay absolute attention to what kind of behavior we are reinforcing and not reinforcing, since, be it by our conscientiousness or negligence, we are effectively molding the behavioral repertoire of another individual at all times. Fortunately Skinner's theory can help immensely in meeting both challenges.

With respect to the first challenge, that of finding the most effective means of supplying reinforcers, Skinner notes that

Fortunately we can solve the problem of education without discovering or inventing additional reinforcers. We merely need to make better use of those we have.<sup>7</sup>

Increased effectiveness, according to Skinner, is primarily a matter of the proper scheduling of reinforcement. By regularizing the schedule of reinforcement we can insure the rapid and enjoyable acquisition of centuries worth of knowledge and skills. And fortunately, we can do so by bringing natural reinforcers, such as satisfaction, to bear in the classroom.

### *general strategy*

The technologies of teaching machines and programmed instruction help describe the general strategy to be employed. Both methods require the breakdown of a subject or a lesson into a series of small learning steps. Once the lesson is broken down, it is reconstructed in a logical sequence, which itself turns out to be a reinforcing sequence. Acquisition of the proper knowledge or skill is reinforced at its own level and again at the next level since its acquisition is deliberately made a necessary condition for proceeding to and acquiring the behavior required at the next level. Thus the gradual elaboration of extremely complex patterns of behavior and the maintenance of the behavior in strength at each level is achieved.

Furthermore, the process is self-paced. Each student proceeds at his own rate. Thus unlike teacher-paced learning, the possibilities

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<sup>7</sup>"Why We Need Teaching Machines" in *Cumulative Record*, p. 173.

of frustration and failure are greatly diminished. The rich get richer, and so do the poor. Everyone accumulates wealth; it merely takes some longer than others.

In any case, immediate and regular reinforcement insures rapid and lasting learning; the self-paced and incremental process continually develops the skills of self-management, and the feelings of self-confidence and satisfaction. Confident and satisfied students are more highly motivated than defeated and frustrated students, and when students are highly motivated, the learning process becomes self-sustaining.

Popular belief credits the regular and consistent scheduling of reinforcement as an effective method for teaching basic language and arithmetic skills, and nothing else. It is viewed as an elementary school innovation. This is an unfortunate myth. The programming strategy of breaking down a course into a succession of learning steps where completion of a task is rewarded immediately, and then again a short time later (since its completion greatly enhances the ease with which the next step is taken), has been successfully employed in colleges and secondary schools, in lecture courses with three hundred students and in seminars with fifteen, in science courses and humanities courses.<sup>8</sup> Thus there is no question that we now have the effective means to shape the educational behavior of our charges. Whether or not we do so is a question of our imagination, conscience, and good sense.

### *undesirable behaviors*

In any case the effective educational means at our disposal requires that we pay renewed attention to the question of educational ends lest we callously reinforce undesirable behaviors. This, of course, is Skinner's second challenge. It too receives renewed emphasis within the theory since reinforcers are not choosy. If a student gets a good grade because he has cheated, then cheating behavior is strengthened.

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<sup>8</sup>See "Philosophy Seminars and the Interview Method," Owen J. Flanagan, Jr., in *Metaphilosophy*, (Vol. 5, No. 4, October, 1974), pp. 372-375.

Many of us are inclined to think that we have long been clear on the aims of education. We feel that we long ago realized the desirability of getting our students to be rational, knowledgeable, self-motivated, moral, and creative, and that we have just been waiting for the effective means to come along.

There is a certain amount of truth to this belief. Unfortunately there has been, and continues to be, a gap between our theory about educational aims and our practice. Skinner's theory can help close this gap. Let us see how by briefly examining four different but common educational practices: multiple choice testing, the lecture method, artistic education, and moral education.

Multiple choice testing seems like a relatively benign, non-descript, and trivial educational device. Nevertheless, the practice neatly underlines the general problem. What kind of behavior, if any, gets reinforced on a multiple choice test? The simple but evasive answer: the skill of recognition gets reinforced. Perhaps the answer seems as benign as the question. Nevertheless we now need to ask whether the skill of recognition is really a desirable and valuable aim of education. This question admits no easy answer. It depends, among other things, on how the skill of recognition is related to the skills of active cognition and construction. Nevertheless, if, for example, our goal in a biology course is the generation of the ability to manipulate and use biological concepts actively, then multiple choice tests are not directly conducive to achieving this goal.

Let us now entertain a different scenario, that of the typical lecture course where the lectures consist primarily of clarifications of the assigned readings. What gets reinforced here? As always, the answer hinges on an accurate description of what sorts of behavior students are engaging in during the lecture. However else it may be described, they are most certainly behaving passively. Is careful, conscientious reading being reinforced? Probably not, since typically careful reading becomes unnecessary if the student can adequately sponge up the material contained in the lecture. Is active manipulation of ideas being reinforced? Again, probably not, since the students are not active.

Nowhere does the importance of the students' active participa-

tory behavior become more apparent than in artistic education — students need institutional opportunities to act creatively before we can expect them to become truly creative. But here our traditional philosophy of man has really gotten in the way. Artistry is viewed as the last bastion of spontaneous activity. We wait for and expect creative individuals occasionally to pop out of the masses. “Creating the Creative Artist”<sup>9</sup> strikes us as irrevocably paradoxical — somehow artists just happen. The point, however, is that we now, in fact, have the means at our disposal to create more artistic individuals, be they appreciators or participants. But in order to do so we need first to make a commitment to the desirability of creativity, then to reinforce active creative behavior in our schools. As things now stand we give artistry low priority in relation to the other subjects, thus we reinforce it less, thus it is no wonder that creativity is a rarity.

### *moral education*

Finally, let us consider the case of moral education. Without attempting to answer the question of what precisely it means to be moral, let us admit for the time being that there is an intuitive difference between virtue and vice, and between moral individuals and immoral individuals. Let us further admit that our intuitions about morality, as opposed to immorality, do not rest entirely on our perceptions of the worth or lack of worth of a particular action. We consider both Socrates and M. L. King, Jr. moral, yet Socrates would never consciously break a law, while King consciously did break laws. Paradoxically, we consider both Socrates and King to be among the most moral of men for precisely the same reason; they both offered persuasive arguments from principle to support their actions. If being moral has something to do with the behavior of offering good reasons for contemplated action — if it requires self-knowledge and skill at synthesizing data and analyzing options — then it is legitimate to ask if current educational practices reinforce such behavior.

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<sup>9</sup>“Creating the Creative Artist” in *Cumulative Record*, pp. 333-344.

Current moral education practices still employ the “bag of tricks”<sup>10</sup> model. Students are exhorted to behave in accordance with certain rules. They are expected to absorb the rules passively, and to act accordingly. Reasons, if any, offered for the rules range from ‘God said so,’ to ‘I said so,’ to ‘they will make you good and happy.’ The first two reasons imply punishment if the student fails to comply with the rules; the third reason is simply unconvincing to the moral neophyte. Without going into detail about the ultimate effects of such practices, the point for now is that if our intuitions about Socrates and King are correct, then a set of moral yes-men is not the desired end of moral education.

### *moral reasoning*

Fortunately, educational practices can be effectively employed to reinforce the desired moral skills. Namely, by confronting students with moral dilemmas in the classroom we can directly engage them in the processes of moral reasoning. We can get them to consider imaginatively the myriad consequences of potential courses of action and to separate selfish reasons from unselfish reasons. We can get them to engage in dialogue with others evaluating their reasons; just such skills made Socrates and King moral.

In any case, thanks to Skinner we now have an effective behavioral-control technology at our disposal. Failure to employ that technology does not entail leaving man free; rather, it entails leaving the control of his behavior to the random processes in the environment. By conscientiously applying the technology to achieve desirable ends we stand a chance of creating a world populated by more rational, moral, creative, and happy individuals. That is what behaviorism is all about.

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<sup>10</sup>See L. Kohlberg, “Education for Justice,” in *Moral Education: Five Lectures* (Nancy F. and Theodore R.Sizer, eds., Harvard University Press, Cambridge, Mass., 1970) for a description and critique of the “bag of tricks” model.

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## ARTICLES

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